Supreme Court, U.S.
FILED
MAY 7 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1777

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,
-vs-
DANNY REIS, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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*Respondents.***

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc. respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 8, 1980.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet officially reported, appears unofficially at 103 LRRM 2722. It is

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* Petitioners, who were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc.

** Respondents are present and former employees of the Petitioners who were represented by Teamsters Local 332, affiliated with the International Brotherhood of Teamsters and who were employed by Petitioners at their Flint, Michigan facilities. The following individuals were designated as Plaintiffs in the consolidated action: Danny Reis, Larry Keller, Virgil Williams, John Sealey and John Lamb (Complete Auto Transit); Delbert Addison, Michael Boudreau, Donald Sears, and Gerald Soupal (Automobile Carriers, Inc.); Joseph A. Hardacre, Carl S. Letts, Herman C. McCullough, Dennis Stockinger and Edward G. Warner (F. J. Boutell Driveaway Co., Inc.).

appended at App. A., pp 1a-13a, infra. The opinions of the District Court granting the Motion to Dismiss and denying the Motion for Reconsideration are not reported. They are appended respectively as App. B and App. C, pp 15a-19a and pp. 19a-21a, infra.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on February 8, 1980. This petition for certiorari was timely filed within 90 days of that date. Jurisdiction of this Court is invoked under 28 USC §1254(1).

QUESTION PRESENTED

Are employees who engaged in a work stoppage in violation of the collective bargaining agreement and who acted without the authorization of their union individually liable for damages sustained by their employer arising out of their breach of the collective bargaining agreement?

STATUTE INVOLVED

This case involves §301 of the Labor Management Relations Act, 61 Stat. 156, 29 USC §185, printed in the Appendix at App. D, p. 21a, infra.

STATEMENT OF THE CASE

Federal Jurisdiction

Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc., petitioners, brought this action pursuant to Section 301 of the Labor Management Relations Act (29 USC §185) against named and unnamed employees for injunctive and monetary relief as a result of the employees' participation without the

authorization of their union in a work stoppage in violation of the no-strike clause of the collective bargaining agreement to which all parties were bound. The cases were consolidated for a trial.

Statement Of Facts

The employers are engaged in the transportation by truck of newly manufactured motor vehicles. All are signatory to an identical collective bargaining agreement entitled the National Master Automobile Transporters Agreement and Central and Southern Conference Areas Supplemental Agreement which covered their operations, including their Flint, Michigan facilities. The collective bargaining agreement contained a no-strike clause and a provision which required the submission of all disputes to the grievance procedure.[1]

The employees are drivers and other individuals employed at the employers' Flint, Michigan facilities who are members of Teamsters Local 332. Teamsters Local 332 is signatory to the collective bargaining agreement with the companies and is the exclusive bargaining agent for the employees.

On June 8, 1976, the employees of Complete Auto Transit engaged in an unauthorized work stoppage. On June 10, the employees of the other two companies engaged in similar unauthorized strike activity. The companies filed the instant action pursuant to §301 seeking injunctive relief and damages from the employees. On June 14, 1976, the District

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[1] Article 7, §1 of the National Master Automobile Transporters Agreement provides, in pertinent part:

> The Unions and the Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employees, nor shall the Employer use any method of lockout or legal proceeding without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise.

Court, after a hearing, denied the companies' request for injunctive relief. The District Court found that the underlying dispute was between the union and its members and therefore not arbitrable under the agreement. The District Court also found that the strikes had not been authorized by the union. (App. A, 2a)

On June 16, 1976, the companies filed amended complaints, renewing their request for injunctive relief. After a hearing on the motions on June 21, 1976, the District Court issued preliminary injunctions. The District Court found that the dispute between the union and its members had been resolved and that the only remaining issue pertained to the employees' demand for amnesty from the companies which was arbitrable under the collective bargaining agreement. The District Court concluded that the work stoppages violated the no-strike clause and that the requirements for injunctive relief were present.

The Proceedings Below

1. *The District Court*

In March of 1977, the employees moved for the dismissal of the consolidated actions.[2] The motion asserted that the request for damages did not state a valid claim for relief. The District Court granted the motion and held that the employees could not be sued for monetary relief in their individual capacities since such relief would frustrate the Congressional purpose behind Section 301 of shielding union members from individual liability. (App A, 17a)

The companies moved for the reconsideration of the dismissal of the action. The District Court denied the motion. The District Court found the reasoning in *Sinclair Oil Corp.* v *Oil, Chemical, & Atomic Workers Int'l. Union,*

[2] The motion also sought to have the injunctions dissolved. Since the only issue raised in this petition is the dismissal of the damage action, discussion of the lower courts' treatment of the injunction issue has been omitted.

425 F2d 49 (7th Cir. 1971) to be in harmony with the intent of Congress in passing §301 and rejected the companies' contention that the Appeals Court in *Sinclair* had improperly construed the legislative history. (App. C, 20a)

2. *The Appeals Court*

Upon appeal, the Court of Appeals for the Sixth Circuit affirmed the dismissal of the damage action. The Appeals Court discussed the Seventh Circuit's decision in *Sinclair Oil, supra,* and agreed with that court's interpretation of the legislative history of §301. The Seventh Circuit had concluded that Congress did not intend to create a cause of action under §301 for damages against individual union members for breach of the no-strike agreement because of the concern to avoid a repetition of the *Danbury Hatters* cases[3]. The Appeals Court rejected the contention that this Court's statements in *Smith* v *Evening News Association,* 371 U.S. 195 (1962) and *Hines* v *Anchor Motors Freight, Inc.,* 424 U.S. 554 (1976) involving individual actions arising out of the contract violations by employers supported the existence of a damage action against individual employees. (App. A, 13a)

REASONS FOR GRANTING THE WRIT

I. THE ISSUE OF INDIVIDUAL LIABILITY FOR BREACH OF THE NO-STRIKE CLAUSE OF THE COLLECTIVE BARGAINING AGREEMENT BY PARTICIPATION IN AN UNAUTHORIZED WORK STOPPAGE IS AN IMPORTANT AND REOCCURRING QUESTION WHICH HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

The Sixth Circuit's decision reflects the important statutory and policy considerations arising out an attempt

[3] See *Loewe* v *Lawlor,* 208 U.S. 274 (1908); *Lawlor* v *Loewe,* 235 U.S. 522 (1915), and *Loewe* v *Savings Bank of Danbury,* 236 F. 444 (2d Cir. 1916), aff'd, 242 U.S. 357 (1917).

by an employer to hold its employees individually liable for damages arising out of their conduct which was neither authorized nor approved by their union and which was in violation of the collective bargaining agreement. This Court has not addressed the issue since *Atkinson* v *Sinclair Refining Company*, 370 U.S. 238 (1962). In *Atkinson*, the employer sought damages from individuals whom it alleged were committeeman of the local union and agents for the international union. In holding that the law required the dismissal of the count, this Court stated

> [W]e therefore do not reach the question of whether the count would state a proper §301(a) claim if it charged unauthorized, individual action. 370 U.S. at 249, n. 7.

The issue raised in the instant case has been subject to widespread litigation with conflicting results.[1] The instant case provides an opportunity for the Court to consider and resolve issues left open in *Atkinson*. The issue of individual liability is of widespread national concern as reflected by the various lower court decisions. The absence of a definitive resolution of the issue has led to the conflicting interpretations of §301. It is in the public interest for the court to resolve this substantial issue.

Employees who benefit from the terms of a collective bargaining agreement and who can enforce the agreement in

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[4] For cases allowing damage actions against individual employees, see, e.g. *Certain-Teed* v *Local 37A, United Steelworkers of America*, -F.Supp-, 101 LRRM 2052 (N.D. Pa. 1980); *Alloy Cast Steel Company* v *United Steelworkers*, 429 F.Supp. 445 (N.D. Ohio 1977); *Du Quoin Packing Company* v *P-156 Amalgamated Meat Cutters and Butcher Workers of North America*, 321 F.Supp. 1230 (E.D. Ill. 1971); *Maita* v *Killeen*, 465 F.Supp. 471 (E.D. Pa. 1979); *New York State United Teachers* v *Thompson*, 459 F.Supp. 677 (N.D. NY 1978). For cases prohibiting actions against individual employees, see, e.g., *United Steelworkers of America* v *Lorraine, a Division of Koehring Co.*, -F.2d-, 103 LRRM 267 (6th Cir. 1980); *Westinghouse Electric Corp.* v *Electrical Workers*, 470 F.Supp. 1298 (W.D. Pa. 1979); *Benada Aluminum Products Co.* v *United Steel Workers*, 83 Lab. Cas. (CCH) ¶10, 609 (N.D. Ohio 1978); *United States Steel Corp.* v *UMW, Local 8003*, 83 Lab. Cas. (CCH) ¶10, 612 (D. Utah 1978).

federal court should be held accountable for their individualized breaches of the agreement. As was recognized in *Boys Markets, Inc.* v *Retail Clerks Union, Local 770,* 398 U.S. 235 (1970), labor organizations have grown in strength, and the Congressional emphasis has shifted from the protection of the labor movement to the encouragement of collective bargaining and the peaceful resolution of industrial disputes.

The resolution of the instant issue is vital to the assurance that all parties to the agreement, including the employees who receive the benefits from the agreement, will abide by the terms of the agreement or will be held accountable for their violations. The actions of employees who violate the agreement in contravention of their union seriously undermine the viability and the stability of the collective bargaining agreement. The courts have long recognized that there can be no effective bargaining if employees are at liberty to ignore the bargaining agency and take matters into their own hands. See *National Labor Relations Board* v *Draper Corp., 145 F2d 199 (4th Cir. 1944); see also, Emporium Capwell Co.* v *Western Addition Community Organization,* 420 U.S. 50 (1975).

II. THE DECISION BELOW CONFLICTS WITH THE PRINCIPLES SET FORTH IN THIS COURT'S DECISIONS WHICH HAVE FASHIONED THE SUBSTANTIVE LABOR LAW.

The Sixth Circuit's decision incorrectly construed and applied federal labor policy in conflict with the holdings in *Textile Workers Union of America* v *Lincoln Mills of Alabama,* 353 U.S. 448 (1957); *Smith* v *Evening News Association,* 371 U.S. 195 (1962); and *Hines* v *Anchor Motor Freight, Inc.,* 424 U.S. 554 (1976). The Appeals Court reviewed this Court's decisions in *Smith* and *Hines* and concluded that neither case is authority for holding that Congress intended to create a cause of action for damages against individual employees. In so holding, the Appeals

Court has misinterpreted the significance of those decisions as well as the decision in *Lincoln Mills*.

In *Lincoln Mills*, §301 was interpreted to authorize federal courts to fashion a body of federal law for the enforcement of collective bargaining agreements. 353 U.S. at 451. The substantive law to be applied is federal law which the courts must fashion from the policy of our national labor laws. This Court concluded that a narrow reading of §301 would defeat the policy of the Act. This Court also recognized that

> Other problems will lie in the penumbra of expressed statutory mandates. Some will lack expressed statutory sanction but will be solved by looking at the policy of the legislation at fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. 353 U.S. at 457.

In *Smith* v *Evening News Association*, this Court stated that §301 has substantive content and that Congress has directed the courts to formulate and to apply federal law in suits involving alleged violations of collective bargaining agreements. This Court also reviewed the various types of actions which have been brought under §301. 371 U.S. at 200. In *Smith*, explicit recognition was given to the fact that individual claims often lie at the "heart" of the contractual grievance procedure and are "intertwined" with the interests of the union. This Court refused to exclude such individual claims from the coverage of §301 since such exclusion would "stultify" the Congressional policy of having the administration of collective bargaining agreements administered under a uniform body of federal substantive law. 371 U.S. at 200.

In *Hines*, this Court again reiterated the purpose and the scope of §301 which had previously been discussed in *Smith*. This Court stated

> §301 contemplates suits by and against individual employees as well as between unions and employer;

> and contrary to earlier indications, §301 suits encompass those seeking to vindicate "uniquely personal" rights of employees such as wages, hours, overtime pay, and wrongful discharge. 424 U.S. at 562.

The Appeals Court's interpretation of the *Smith* and *Hines* decisions misconstrues the significance of those decisions as they pertain to the development of federal substantive labor law. Those decisions recognize that employees as well as the unions may sue and be sued under §301. Such a result is consistent with the legislative purpose. The Appeals Court's refusal to recognize that an employer may sue its employees for individualized breaches of the collective bargaining agreement thwarts the Congressional purpose as interpreted by this Court. Collective bargaining agreements are equally binding and enforceable on all parties to the agreement.

The Appeals Court's decision establishes a gap in the uniform enforcement of collective bargaining agreements. Individual employees are given access to the federal courts for the vindication and the preservation of contractual rights while employers are denied similar access when seeking to redress violations of the agreement by employees acting in their individual capacity.

The instant case presents a problem which lies in the penumbral area of express statutory authority. The Appeals Court's failure to address and to analyze the problem with the "judicial inventiveness" contemplated in *Lincoln Mills* is inconsistent with the development of federal labor law as manifested through this Court's decisions. To allow employees to violate with impunity the collective bargaining agreement marks a return to the conditions which lead Congress to enact §301 in the first place.

III. THE DECISION BELOW INCORRECTLY INTERPRETED THE LEGISLATIVE HISTORY OF §301.

The Sixth Circuit agreed with the construction of the legislative history of §301 given by the Seventh Circuit

Court of Appeals in *Sinclair Oil Corp.* v *Oil Chemical and Atomic Workers International Union*, 452 F2d 49 (7th Cir. 1971)(App. A, 13a). The Appeals Court misconstrued the legislative history as it related to the "spectre" of the *Danbury Hatters* decisions and failed to recognize the underlying congressional policy which lead to the enactment of §301.

The Congressional concern with insulating individual members from financial liability is reflected in the legislative history and enactment of §301(b). The limitation of an individual's liability was carefully and specifically delineated. Where the individuals are acting as agents of the union, they are not liable for damages arising out of their conduct. Monetary relief can only be obtained from the union. [5]

The limitation of individual liability was not the motivating factor behind the enactment of §301. Congress was concerned with making collective bargaining agreements equally binding and enforceable on all parties. The absence of an effective method to assure uninterrupted operation during the term of the agreement and freedom from economic warfare was viewed by Congress as a significant obstacle to the fostering of such agreements. To encourage the making of such agreements and to insure performance by the parties, Congress made collective bargaining agreements enforceable in federal court. S. Rep. No. 105, 80th Cong., 1st Sess. 15, 16 (1947); 93 Cong. Rec. 4141, 4262 (Remarks of Senator Taft) (1947).

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[5] In the debate on Conference Report, Representative Case stated, with respect to the *Danbury Hatters* situation.

> The objection to suits against labor organizations has stemmed from a proper resentment against the travesty that took place in the old Danbury Hatters case where individual members of a union were harried and their property attached to satisfy a judgment for action taken by officers whom they did not control. It was as bad as such action would be against minority and individual stockholders of a corporation for acts they could not control. Both in the bill last year, and in this Taft-Hartley bill, the language while making labor organizations responsible under their contracts and for the acts of their agents, limits judgments to the assets of the organization itself. 93 Cong. Rec. 6283 (1947).

In reaching its conclusion that the employees could not be sued individually for damages, the Appeals Court noted that there is no reference in §301 authorizing money judgments against individual union members. (App. A, 10a) The Appeals Court construed the silence to mean that no such action is available under the statute. As this Court recognized in *Boys Markets*, it is "at best treacherous" to find the adoption of the controlling rule of law in congressional silence alone. 398 U.S. at 241. Statutory interpretation requires more than concentration upon isolated words. Consideration must be given to the total body of pertinent law and policies underlying the law. 398 U.S. at 250.

The Appeals Court's construction of the legislative history and its emphasis upon the *Danbury Hatters* cases is unfounded and not applicable to the instant factual situation. Congress intended to protect individuals from monetary liability when they are acting as agents of their union or when the union acted without the members' knowledge or authority. There is nothing in the legislative history that would support the argument that Congress intended to extend this same protection to employees who act in their own individual capacity and not as agents of their union.

The dispute as to the legislative history as it pertains to the issue of individual liability for individual breaches of contract should be resolved by this Court. A definitive statement is now necessary to clarify the uncertainty of the accountability of individuals acting outside their agency relationship with their union.

IV. THIS CASE PRESENTS AN IMPORTANT ISSUE IN THE AFTERMATH OF *CARBON FUEL COMPANY* v *UNITED MINEWORKERS OF AMERICA*.

The issue raised by the instant case presents a question of paramount importance in view of the decision of this Court in *Carbon Fuel Company* v *United Mineworkers of America*, -U.S.-, 100 S.Ct. 410 (1979). In *Carbon Fuel*, this Court held that the responsibility of a union under §301 for strikes in breach of the collective bargaining agreement is

limited to those situations where the union may be found responsible according to the common law rule of agency. 100 S.Ct. at 413. A union is not liable for strikes which it did not authorize, ratify or participate in.

In the instant case, the employers did not assert that the union authorized a strike nor did they seek damages from the union. (App. A, 9a) Indeed, under the rationale of *Carbon Fuel,* employers could not assert that the union was liable for damages given the circumstances underlying the work stoppages. The Appeals Court's denial of relief against the individuals effectively precludes the employers from any remedy to recoup the financial damage that the individuals have inflicted upon them. Such a result is clearly unwarranted under §301 since there is no indication Congress intended to limit the type of relief available to the employer in situations of this nature when there is no agency relationship between the individuals and their union.

The rights of an employer against individuals not acting as agents needs clarification in light of the *Carbon Fuel* decision. The Appeals Court decision coupled with *Carbon Fuel* leaves the employers in the instant case without any monetary remedy.

CONCLUSION

For the foregoing reasons, Petitioners respectfully submit that a Writ of Certiorari should issue.

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APPENDIX

APPENDIX A

No. 78-1053

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

COMPLETE AUTO TRANSIT, INC., F. J. BOUTELL DRIVEAWAY COMPANY, INC., AUTOMOBILE CARRIERS, INC.,

Plaintiffs-Appellants,

v.

DANNY REIS, LARRY KELLER, VIRGIL WILLIAMS, JOHN SEALY, JOHN LAMB, et al.,

Defendants-Appellees.

APPEAL from the United States District Court for the Eastern District of Michigan.

Decided and Filed February 8, 1980.

Before: WEICK, LIVELY and MERRITT, Circuit Judges.

LIVELY, Circuit Judge. The first issue in this appeal requires the court to traverse the largely uncharted waters which lie between *Boys Markets, Inc.* v. *Clerks Union*, 398 U.S. 235 (1970), and *Buffalo Forge Co.* v. *Steelworkers*, 428 U.S. 397 (1976). The second issue relates to a question which the Supreme Court has never decided—whether an employer may recover damages from individual union members for alleged breaches of the no-strike provision of a collective bargaining agreement where the employer does not seek damages from the union.

I.

Three employers brought nearly identical actions in the district court. The actions were consolidated for trial and a single judgment was entered. All employers appeal. The

three plaintiffs are engaged in the transportation by truck of motor vehicles, two as common carriers and one as a contract carrier. All are signatories to an identical collective bargaining agreement which covers operations at their respective Flint, Michigan facilities. The defendants are drivers and other employees at the Flint facilities who are members of Teamsters Local Union No. 332. Teamsters 332 is signatory to the collective bargaining agreement with the three employers, and is the exclusive bargaining agent for all the defendants. The collective bargaining agreement contains a no-strike clause and a provision requiring that all disputes are subject to a grievance procedure which includes binding arbitration as its final step.

In June 1976 employees of the three plaintiffs went out on strike. The employers filed suit pursuant to § 301 of the Labor Management Relations Act, 1947 as amended, 29 U.S.C. § 185 (1976), seeking injunctions against the wildcat strikes. After consolidation, the district court denied injunctive relief upon a finding that the strikes were not over an arbitrable issue. *Boys Markets, supra; Plain Dealer* v. *Cleveland Typographical Union,* 520 F.2d 1220 (6th Cir. 1975), *cert. denied,* 428 U.S. 909 (1976); *United States Steel Corp.* v. *Mine Workers,* 519 F.2d 1236 (3d Cir. 1975), *cert. denied,* 428 U.S. 910 (1976). This holding was based on the court's finding that the differences which led to the work stoppage were between the union members and their union, rather than between employers and employees. Specifically, the court found that the members claimed the union was not properly representing them in current negotiations for amendments to the collective bargaining agreement. The court also found that the strikes had not been authorized by the union. This decision was delivered orally on June 14, 1976 and an order denying plaintiffs' motions for preliminary injunctions was entered June 21, 1976. The findings of

the district court and its denial of injunctive relief were affirmed by this court in an unpublished order entered February 28, 1978 (No. 76-2016).

Meanwhile, on June 16, 1976 the employers filed amended complaints in which they renewed their motion for injunctive relief. The amended complaints stated that Local 332 had offered to enter into an agreement with the employers by which the striking employees would return to work in exchange for assurances that no discipline, reprisals, penalties or fines would be imposed upon them. After a hearing at which the union agreed to forego disciplining the employees for the unauthorized strike if they would return to work immediately, the court concluded that the only unresolved issue was the workers' demand for amnesty from their employers. The court further found that this issue involved a dispute between the employers and employees over the terms of employment and was arbitrable. Concluding that the continuation of the work stoppage violated the no-strike clause of the collective bargaining agreement and that the traditional requirements for equitable relief were present, the district court enjoined the employees from engaging in the work stoppage and directed the employers to submit themselves to the grievance procedures of the agreement, including arbitration, should any discipline be imposed and grievances taken. The preliminary injunction was issued on June 21, 1976. The injunction was directed to the individual defendants "and other members and persons represented by Local Union No. 332 who are employed by the plaintiff [s] . . . ." No appeal was taken from this order.

On March 25, 1977 the defendants moved the court for dismissal of the consolidated actions. In their motion the defendants stated that all striking employees of the three plaintiffs had returned to work on June 21, 1976 and had

continuously remained at work since that time. It was asserted that this fact rendered the case moot as to the issue of continuation of the strike. The motion stated that the only other issue in the case—the demand for damages from individual employers—did not present a valid claim for relief. The plaintiffs responded that the defendants had returned to work in obedience to the court order of June 21, 1976 and had continued to work, but denied that the issues in the case were moot or that they were precluded from recovering damages from individual employees for breach of the no-strike provision of the collective bargaining agreement.

The plaintiffs appeal from the final judgment of the district court dismissing all claims. In two memorandum opinions and orders the district court concluded that *Buffalo Forge, supra,* had substantially narrowed the *Boys Markets* exception to the prohibition against injunctions in labor disputes contained in § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104 (1976). The court found that the work stoppage in the present case was "precipitated by an intra-union dispute," which was not arbitrable. Though this dispute was soon resolved, the work stoppage continued over a dispute which was arbitrable, the issue of amnesty for the strikers. The district court concluded that its June 21, 1976 injunction was proper when entered, but that *Buffalo Forge* permitted an injunction only if the issue over which the strike *began* was arbitrable and did not permit injunctive relief where an arbitrable issue was only the cause of continuation of the work stoppage. The court also determined that one of the congressional purposes behind enactment of § 301 of the Labor Act was to shield union members from liability and that this purpose would be undercut if monetary damages were recoverable by an employer from individual employees.

II.

Despite the anti-injunction provision of the Norris-LaGuardia Act the Supreme Court held in *Boys Markets* that a federal court may enjoin a strike when certain conditions are met. These conditions were set forth in a passage, 398 U.S. at 254, where the Court quoted from the dissenting opinion in its earlier decision in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 228 (1962):

> "A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance." 370 U.S., at 228. (Emphasis in original.)

The Supreme Court concluded that the strong congressional policy favoring settlement of industrial disputes by arbitration would be frustrated if employers were not permitted to enjoin a strike over an arbitrable issue where the strike violates a no-strike agreement. Since

a no-strike obligation, either express or implied, is the *quid pro quo* for an employer's agreement to submit labor disputes to arbitration, the incentive for such agreements would be lacking if the "most expeditious method by which the no-strike obligation can be enforced is eliminated." 398 U.S. at 248. The Court stated that *Boys Markets* marked a return to its pattern of upholding the national policy favoring arbitration as exemplified in *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957), and the *Steelworkers Trilogy*.[1]

We turn now to *Buffalo Forge* which involved a classic sympathy strike. Members of a union who had no dispute with their employer refused to cross the picket lines of a sister union which was engaged in a strike against the same employer following failure to negotiate a collective bargaining agreement. The union of the sympathy strikers did have an existing collective bargaining agreement with the employer. This agreement contained a no-strike clause and a provision for compulsory binding arbitration. The Supreme Court affirmed denial of the employer's request for an injunction to halt the sympathy strike upon a finding that "*Boys Markets* plainly does not control this case." 428 U.S. at 407. The question whether the sympathy strike was legal under the agreement was subject to arbitration, the Court held. The employer could obtain a court order requiring the union to arbitrate this issue if it refused to do so upon demand. Further, if the strike were held illegal by an arbitrator the federal statutes would permit issuance of an injunction to enforce the arbitral decision. However, since the sympathy strike was not *over* any dispute subject to the arbitration provisions of the agreement the employer was not entitled to enjoin it.

---

[1] *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

The Court reasoned that *Boys Markets* was designed solely to further the national policy favoring settlement of labor disputes by means agreed upon by the parties. This policy favoring arbitration was not in peril in *Buffalo Forge* because neither the causes nor the issues underlying the sympathy strike were subject to the grievance and arbitration procedures agreed to by the parties. 428 U.S. at 407-8. *Buffalo Forge* emphasizes that the mere fact that a strike may be illegal is not sufficient to empower a federal court to enjoin it. Norris-LaGuardia withholds jurisdiction to grant an injunction unless the case comes within the "narrow" exception established in *Boys Markets*. *Id.* at 402-3. Further, the fact that the legality of a strike may itself present an arbitrable question does not empower a federal court to enjoin the strike. Only if the underlying dispute—the one "over" which the workers are striking—is arbitrable, will the *Boys Markets* exception permit a federal court to enjoin a strike.

The novelty of the present case lies in the fact that a work stoppage which began over a dispute which was not subject to arbitration was continued because of a dispute which was arbitrable. The district court based its decision on the fact that the work stoppage was "precipitated by" a non-arbitrable dispute. Support for this conclusion is found in the language of *Buffalo Force* where the Court said *Boys Markets* would have permitted an injunction against the strike "had the strike been precipitated by a dispute between union and management that was subject to binding arbitration under the provisions of the contracts." *Id.* at 406.

The employers point out that the nature and purpose of the work stoppage in the present case changed after the strike began. The district court made a finding that the intra-union dispute had been settled and the work stoppage

continued only because of the dispute over a demand that the employers grant amnesty to the strikers. The employers contend that the district court should have considered what the strike was "over" at the time of its decision rather than what "precipitated" it in the first place. We agree.

In cases since *Boys Markets* this court has consistently permitted injunctions against strikes only where the strikes are "over" arbitrable disputes or grievances. *See Plan Dealer* v. *Cleveland Typographical Union,* supra; *Southern Ohio Coal Co.* v. *Mine Workers,* 551 F.2d 695 (6th Cir.), *cert. denied,* 434 U.S 876 (1977); *United States* v. *Cunningham,* 599 F.2d 120 (6th Cir. 1979). In none of these cases did the cause of the work stoppage change from a non-arbitrable dispute to an arbitrable one. We believe the district court placed too much emphasis on the precipitating cause from which the strikes in the present case originated. There is no doubt that so long as the employees refused to work because of dissatisfaction with the representation given by their union, the strike was not enjoinable. However, the district court found that dispute was resolved. When the defendants continued to strike beyond the time when their intra-union dispute ended, the strike was "over" a different issue—their demand that no discipline be imposed for their participation in the strike. All parties agree that this issue was arbitrable. The only purpose of the strike at the time the employers renewed their motion for preliminary injunction on June 16, 1976 was to compel the employers to agree to forego disciplining the strikers.

We do not believe *Buffalo Forge* required the district court to dissolve the preliminary injunction. The arbitrable issue remaining in the case was much more than the legality of the strike itself, an issue which *Buffalo Forge* held not sufficient to permit an injunction. Here there had been a

transformation of the strike so that its underlying cause had become an arbitrable dispute. At this point the matter came within the ambit of *Boys Markets*. The construction of *Buffalo Forge* adopted in *Cedar Coal Co.* v. *Mine Workers*, 560 F.2d 1153 (4th Cir.), *cert. denied*, 434 U.S. 1047 (1977), appears logical and correct. Under that construction *Boys Markets* does not apply to permit an injunction where the only dispute between a company and a union is over the meaning or application of a no-strike provision, and this dispute has been precipitated by a strike over a non-arbitrable issue. However, if the underlying cause of the strike is a disagreement over an arbitrable issue, and its object or purpose is to compel the employer to concede on the arbitrable issue, the strike may be enjoined provided other equitable requirements are satisfied. *Id.* at 1170; *see also Napa Pittsburgh, Inc.* v. *Automotive Chauffers Union*, 502 F.2d 321, 324-33 (3d Cir.), *cert. denied*, 419 U.S. 1049 (1974) (Hunter, J., dissenting). This construction is logical because in such a case the strikers are seeking to avoid the agreement for arbitration, and to deny any injunction would deprive the employer of its most expeditious and effective remedy. *Boys Markets*, supra, 398 U.S. at 248-49.

III.

Included in the prayer for relief in the amended complaint filed by each plaintiff was the following demand:

> 5. That the Court award damages against the Defendants, in their individual capacity, for all losses arising out of the unlawful work stoppage and for attorney fees.

Damages were not sought from Local 332. Thus the question for decision is whether individual members of a

union may be sued for damages under §301 of the Labor Management Relations Act for violation of the no-strike provision of a collective bargaining agreement where there is no attempt to recover from the union.

Section 301 of the Labor Act does not deal directly with this question. It provides that a labor organization is bound by the acts of its agents, but states specifically that a money judgment against a labor organization "shall not be enforceable against any individual member or his assets." §301(b). There is no reference to money judgments against individual union members. In *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962), the Supreme Court held that a complaint which necessarily alleges union liability but seeks damages only from union agents does not state a claim for relief under §301. The Court did not "reach the question of whether the count would state a proper §301(a) claim if it charged unauthorized, individual action." *Id.* at 249, n. 7. In the present case the plaintiffs pled that the strikes were without union authorization or approval.

In *Sinclair Oil Corp.* v. *Oil, Chemical & Atomic Workers*, 452 F.2d 49 (7th Cir. 1971), the court dealt directly with the question before us. It concluded that §301 does not permit an employer to recover damages from individual union members for violation of an agreement not to strike. This conclusion was based on a careful consideration of the legislative history of §301. Though one purpose of the 1947 Labor Act was to promote labor peace by making unions responsible for their actions, there appears to be no corresponding purpose to make individual members liable in money damages for unauthorized breaches of a no-strike agreement. The remedy against individual members is discipline, or even discharge. But the

specter of the "Danbury Hatters"[2] decisions still haunted the minds of the lawmakers. *See* statement of Senator Taft, "We do not want to perpetuate such a condition," 92 Cong. Rec. 5705 (1946); statement of Senator Ball, also a sponsor of the Act, "by providing that the union may sue and be sued as a legal entity for a violation of contract, and that liability for damages will lie against union assets only, [§301] will prevent a reptition of the Danbury Hatters case, in which many members lost their homes because of a judgment rendered against the union which also ran against individual members of the union." 93 Cong. Rec. 5014 (1947).

After discussing the legislative history of §301 the *Sinclair Oil* court stated its conclusion as follows:

> Congress was well aware of the problems involved in reaching and enforcing no-strike agreements, and we think that when Section 301 was enacted it had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages. We conclude that the primary remedy of Sinclair is discharge or discipline of individual defendants. 452 F.2d at 54 (citations and footnote omitted).

The employers in the present case rely primarily upon a few district court cases which have taken a contrary view. *New York State United Teachers* v. *Thompson*, 459 F.Supp. 677 (N.D.N.Y. 1978), did not involve breach of a no-strike agreement. Further, the employees who were sued had not acted collectively. It was claimed that two employees had violated the collective bargaining agreement

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[2] *See Loewe* v. *Lawlor*, 208 U.S. 274 (1908); *Lawlor* v. *Loewe*, 235 U.S. 522 (1915), and *Loewe* v. *Savings Bank of Danbury*, 236 F. 444 (2d Cir. 1916), *aff'd*, 242 U.S. 357 (1917), in which judgment against individual union members resulted on levies on the homes of some members.

by failing to remain employed for a given period after receiving extended educational leaves of absence. Since the employees had resigned, the district court found that "the usual employer remedies of discipline or discharge are non-existent." 459 F.Supp. at 683. The case is distinguishable on several grounds from the present case where the employees acted in concert, contrary to the provisions of the no-strike clause, and remained employees, subject to discipline.

The district court in *Alloy Cast Steel Corp.* v. *United Steel Workers*, 429 F.Supp. 445, 451 (N.D. Ohio 1977), held that where "there is no actionable violation by the unions, the Court is not foreclosed from hearing and deciding whether the individual members violated the contract." In support of this conclusion the district court cited statements from two Supreme Court opinions.[3] We do not believe these statements compel the conclusion reached by the courts in *Alloy Cast Steel, supra*, and *Maita* v. *Killeen*, 465 F.Supp. 471 (E.D. Pa. 1979).

In *Smith* v. *Evening News Ass'n.*, the employee's suit was based on a claim of discrimination in job assignments. The trial court held that the claim, if true, would make out an unfair labor practice over which the National Labor Relations Board had exclusive jurisdiction. The issue before the Supreme Court was one of jurisdiction, not the separate question of whether §301 created a cause of action. *See Bell* v. *Hood*, 327 U.S. 678 (1946). The holding in *Smith* v. *Evening News* was that §301 is not to be given a narrow interpretation to prevent an individual employee from suing his employer for damages for breach of a collective bargaining agreement. In *Hines* v. *Anchor Motor Freight*, the question was whether an action could be maintained by

[3] *Smith* v. *Evening News Ass'n.*, 371 U.S. 195 (1962); *Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976).

employees against their employer for breach of a collective bargaining agreement where an accompanying complaint against the union for breach of its duty of fair representation had withstood a motion for summary judgment. The breach claimed by the plaintiffs was discharge from employment. In holding that it was error to dismiss the employees' action against the employer the Court stated, "Section 301 contemplates suits by and against individual employees as well as between union and employers . . . ." 424 U.S. at 562.

Neither of these statements by the Supreme Court in cases involving individual acts of alleged contract violations by employers is authority for holding that it was the intention of Congress in enacting §301 to create a cause of action for damages against individual union members for breach of a no-strike agreement. We agree with the Seventh Circuit in *Sinclair Oil, supra,* that the legislative history indicates that the contrary conclusion is required. Many district courts have agreed with the *Sinclair Oil* holding. *See Westinghouse Electric Corp.* v. *Electrical Workers,* 470 F.Supp. 1298, 1299 (W.D. Pa. 1979), where such decisions are listed.

The judgment of the district court is affirmed in part and reversed in part. The cause is remanded to the district court to determine whether reinstatement of the injunction of June 21, 1976 is warranted under present circumstances. No costs allowed.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

COMPLETE AUTO TRANSIT, INC., F. J. BOUTELL DRIVEAWAY COMPANY, INC., AUTOMOBILE CARRIERS, INC.,
Plaintiffs-Appellants,

v.

No. 78-1053

DANNY REIS, LARRY KELLER, VIRGIL WILLIAMS, JOHN SEALEY, JOHN LAMB, et al.,
Defendants-Appellees.

Before: WEICK, LIVELY and MERRITT, Circuit Judges.

JUDGMENT
(Filed: February 8, 1980)

APPEAL from the United States District Court for the Eastern District of Michigan.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Michigan and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby is affirmed in part and reversed in part. The cause is remanded to determine whether reinstatement of the injunction of June 21, 1976 is warranted under present circumstances.

No costs allowed.

ENTERED BY ORDER OF THE COURT.
(s) JOHN P. HEHMAN
Clerk

Issued as Mandate: March 6, 1980
COSTS: None

Filing fee	$ -0-
Printing	$ -0-
Total	$ -0-

A True Copy.
Attest:
(s) BARBARA T. BURNS
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMPLETE AUTO TRANSIT, INC., et al,
Plaintiffs,

v

CIVIL ACTION
NO: 76-40057

DANNY REIS, et al,
Defendants.

MEMORANDUM OPINION AND ORDER

At a session of said court, held in the Federal Building, Bay City, Michigan on June 8, 1977

PRESENT: Honorable James Harvey
United States District Judge

This consolidated action was brought by plaintiffs, all contract carriers delivering General Motors vehicles from terminal facilities to dealerships. Plaintiffs seek monetary and injunctive relief against Teamsters Local 332 and certain members of the local arising from a work stoppage which took place from June 8 to June 21, 1976.

On June 14, 1976, the Court denied plaintiffs' motion for a preliminary injunction because the issue which had caused

the work stoppage was not arbitrable: an internal dispute between factions in the Local. See *Boys Market Inc* v *Retail Clerks Local 770,* 398 US 235 (1970). Plaintiffs filed a notice of appeal on this issue on June 16. On June 21, after further hearings, the Court found that the internal dispute had been settled and that the work stoppage continued only because of a dispute between the Local and plaintiffs over amnesty for the strikers. Since this issue was arbitrable, the Court granted plaintiffs an order enjoining the work stoppage. At the same time, the Court allowed General Motors Corporation to intervene as a party to the action.

On March 25, 1977, defendants moved to dismiss the Complaint on the grounds that the strikers had returned to work, so that injunctive relief is no longer necessary, and that money damages are not available to plaintiffs. Plaintiffs responded, arguing that the District Court did not have jurisdiction once plaintiffs filed their notice of appeal, denying that the issue of injunctive relief was moot, and denying that they could not get monetary relief.

As to plaintiffs' claim that their appeal ousted the District Court from jurisdiction pending resolution of the appeal, the Court believes that it had jurisdiction to consider those facts and issues not considered and resolved in the first motion for a preliminary injunction. *District 2 Marine Engineers Beneficial Assoc AFL-CIO* v *Falcon Carriers Inc,* 374 F Supp 1342 (ED NY, 1974). The Court, therefore, has jurisdiction to consider whether plaintiffs can get monetary relief and has jurisdiction over the preliminary injunction, which was entered based on separate findings of fact from the order which plaintiffs appealed.

Defendants' argument that an employer may not sue his employees for monetary relief for breach of the collective bargaining agreement, under either federal labor law or state contract law, is well taken, whether or not the union may also be liable. *Eazor Express Inc* v *International*

Brotherhood of Teamsters, 520 F2d 951, 961 n. 5 (CA 3, 1975), *cert den* 424 US 935, *rehearing denied* 425 US 908 (1976); *Sinclair Oil Corp* v *Oil Chemical & Atomic Workers Int'l Union,* 452 F2d 49 (CA 7, 1971). If individual employees could be sued, the Congressional purpose behind Section 301 of the Labor Management Relations Act, 29 USC 185, shielding union members from liability, would be frustrated. Plaintiffs' claims for monetary relief against individual defendants must, therefore, be dismissed.

Whether plaintiffs can now sue Local 332 depends on whether plaintiffs are obliged by the collective bargaining agreement to arbitrate the Local's liability. *Atkinson* v *Sinclair Refining Co,* 370 US 238 (1962); *Drake Bakeries* v *American Bakery & Confectionary Workers International,* 370 US 254 (1962). The National Master Automobile Transporters Agreement in effect on June 8, 1976, provides in Article 7, Section 2, that the Local will make every effort to persuade the employees to terminate unauthorized work stoppages. Section 2 also provides, "The question of whether the . . . Local Union [has met this] obligation . . . or the question of whether . . . Local Union . . . participated in an unauthorized work stoppage . . . by calling, encouraging, assisting or aiding in such stoppage, etc., in violation of the Agreement . . . shall be submitted to the grievance procedure at the national level prior to the institution of any damage suit action."

Since the Sixth Circuit recognizes union liability for unauthorized strikes only where the union authorizes or ratifies the strike, or where its "studied ambivalence" encourages the strike, plaintiffs were bound to arbitrate all issues which state a cause of action against the union. *Southern Ohio Coal Co* v *United Mine Workers,* No. 75-2392 (CA 6, February 11, 1977). The Court finds, therefore, that plaintiffs have not exhausted their grievance procedures as required by *Atkinson* and *Drake Bakeries, supra,* and the Court will dismiss plaintiffs' claims for money

damages against Local 332 without prejudice pending the outcome of arbitration.

Defendants urge that the preliminary injunction entered against them be dissolved on the ground it is no longer needed because defendants have returned to work. Defendants cannot, however, claim that the injunction is not needed simply because they have not yet violated it: this reason is inadequate. The Court, however, notes that there is another reason for dissolving the preliminary injunction.

After the Court enjoined defendants from continuing the work stoppage, the Supreme Court narrowed substantially the exception to the "no injunction" rule of Section 4 of the Norris-LaGuardia Act, 29 USC 104. In *Boys Market Inc* v *Retail Clerks Local 770,* 398 US 235 (1970), the Supreme Court held that a union could be enjoined from violating a no-strike provision in a collective bargaining agreement if the strike was over an arbitrable issue. Subsequent to this Court's order of June 21, 1976, the Supreme Court, in *Buffalo Forge Co* v *United Steelworkers of America,* US , 49 L Ed 2d 1022 (1976), held that a *Boys Market* injunction was appropriate only if the strike was precipitated by an arbitrable issue; it should not be given if the strike now hinges on an arbitrable issue.

The Court, in the present case, found that the work stoppage was precipitated by an intra-union dispute, a non-arbitrable issue. That dispute was soon resolved, however, and the work stoppage continued because of the issue of amnesty for the strikers, an arbitrable dispute. The Court's preliminary injunction was in conformity with the law on the day it was entered, but a Court sitting in equity must take notice of changes in the law. Since *Buffalo Forge Co, supra,* was decided, the preliminary injunction has been improper, and the Court will dissolve it. See *Southern Ohio Coal Co* v *United Mine Workers,* No. 75-2392 (CA 6, February 11, 1977).

For the above reasons, defendants' motion to dismiss claims for monetary relief as to the individual plaintiffs (sic) is GRANTED, and the claims are hereby dismissed. Defendant Local's motion to dismiss claims for monetary relief against it is GRANTED, and those claims are hereby dismissed without prejudice pending exhaustion of the grievance procedure. Defendants' motion to dissolve the preliminary injunction entered against them on June 21, 1976, is GRANTED, and the preliminary injunction is hereby dissolved, leaving only plaintiffs' request for a permanent injunction enjoining defendants from violating the no-strike provision of the collective bargaining agreement in controversy.

IT IS SO ORDERED.

(s) JAMES HARVEY
United States District Judge

MEMORANDUM OPINION AND ORDER

At a session of said court, held in the Federal Building, Flint, Michigan on August 30, 1977

PRESENT: Honorable James Harvey
United States District Judge

Plaintiffs, all contract carriers delivering General Motors vehicles from terminal facilities to dealerships, seek monetary and injunctive relief from Teamsters Local 332 and from certain members of the local because of a work stoppage which took place from June 8 to June 21, 1976. On June 14, 1976, the Court denied plaintiffs' motion for a preliminary injunction halting the work stoppage because, the Court found, the stoppage was caused by a non-arbitrable internal union dispute. On June 21, 1976, after further hearings, the Court found that the internal dispute had been resolved and that the work stoppage continued only because of a dispute between plaintiffs and the local over amnesty for the strikers.

On June 8, 1977, the Court dismissed plaintiffs' claims for monetary relief against the individual strikers and against the local. The Court also found that *Buffalo Forge Co.* v. *United Steelworkers of America,* US , 49LEd 2d 1022 (1976), decided after the Court granted plaintiffs a preliminary injunction, rendered that preliminary injunction improper, and the Court, therefore, dissolved it.

Plaintiffs now move for reconsideration of the Court's rulings dismissing monetary claims against the individual strikers and dissolving the preliminary injunction. For the reasons stated below, the Court hereby DENIES plaintiffs' motion.

As to the claims against the individual strikers, plaintiffs argue that *Sinclair Oil Corp.* v. *Oil, Chemical, & Atomic Workers International Union,* 452 F2d49 (CA 7, 1971), should not be controlling in this Court because the Court in *Sinclair* had failed to analyze properly the legislative history of 29:USC:185 as interpreted by the Supreme Court in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398:US:235 (1970). The Court, however, finds that the reasoning in *Sinclair* is persuasive and that the decision is in harmony with the intent of Congress in passing 29:USC:185. Plaintiffs' motion must, therefore, be denied as to this ground.

Plaintiffs also argue that the Court misinterpreted the holding in *Buffalo Forge, supra.* The Court held that, after *Buffalo Forge,* a strike could be enjoined only if it *began* over an issue which the company and union were bound, by contract, to arbitrate. Since, in the present case, the strike began over a non-arbitrable issue, the Court held that a preliminary injunction was improper even if, as here, the dispute which prolonged the strike was over an arbitrable issue.

The importance of an arbitrable issue is clearly set out in *Buffalo Forge:* the *Boys Markets* exception to the anti-injunction provisions of 29:USC:104 allows injunctions to

enforce promises to arbitrate, not to enforce collective bargaining agreements. In *Buffalo Forge,* the sympathy strike at issue was not, itself, precipitated by an arbitrable issue between plaintiff and defendants; rather, it was precipitated by a disagreement between plaintiff and another local. As in the present case, however, there was an arbitrable issue involved—whether the sympathy strike violated the no-strike clause of the collective bargaining agreement. The Court, nevertheless, characterized the strike as one "over" or "precipitated by" a non-arbitrable issue. The Court believes that the situation in *Buffalo Forge* is analogous to that in the present case, and that the Court's ruling as to the propriety of an injunction was correct. Plaintiffs may be entitled to an order forcing arbitration, but they are not entitled to an injunction halting the strike. Plaintiffs' motion to reconsider this part of the Court's order must, therefore, be denied.

IT IS SO ORDERED.

(s) JAMES HARVEY
United States District Judge

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activites affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Appendix D

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

No. 79-1777

Supreme Court
FILE
NOV 25 1
MICHAEL RODAK, JR.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 7, 1980
CERTIORARI GRANTED OCTOBER 14, 1980

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IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1979

NO. 79-1777

COMPLETE AUTO TRANSIT, INC., et al.,
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-VS-

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Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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THE FOLLOWING OPINIONS, DECISIONS, JUDGMENTS AND ORDERS HAVE BEEN OMITTED IN PRINTING THIS APPENDIX BECAUSE THEY APPEAR ON THE FOLLOWING PAGES IN THE APPENDIX TO THE PRINTED PETITION FOR CERTIORARI:

A. OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FEBRUARY 8, 1980: 614 F.2d 1110 ..... 1a(App.)

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D. MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION IN NO. 76-40057, AUGUST 30, 1977: UNREPORTED ..... 19a(App.)

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* The designation "App." denotes that the page number which it follows appears in the Appendix to the Petition for Certiorari.

I. RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Complete Auto Transit, Inc.,
Plaintiff,

-vs-

Danny Reis, Larry Keller, Virgil Williams, John Sealy and John Lamb and other members and persons represented by Local Union 332 who are employed by Plaintiff at its Flint, Michigan facility.
Defendants.

Civil Action No. 76-40057

Automobile Carriers, Inc.
Plaintiff,

-vs-

Delbert Addison, Michael Boudreau, Donald Sears, and Gerald Supal, and other persons represented by Local Union No. 332 who are employed by Plaintiff at its Flint, Michigan facility.
Defendants.

Civil Action No. 76-40059

F. J. Boutell Driveaway Co., Inc.,
Plaintiff,

-vs-

Joseph Hardacre, Carl Letts, Herman McCullough, Dennis Stockinger and Edward Warner, and other members and persons represented by Local Union No. 332 who are employed by Plaintiff at its Flint, Michigan facility, and Local Union No. 332, affiliated with the International Brotherhood of Teamsters,
Defendants.

Civil Action No. 76-40060

Relevant Docket Entries

DATE	PROCEEDINGS
1976	
June 9,	Complaint of Plaintiff Complete Auto Transit, Inc. filed.
June 14,	Motion of Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc. to Consolidate Case No. 76-40059 and Case No. 76-40060 with Case No. 76-40057 filed by Plaintiffs Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.
June 14,	Order granting Plaintiffs' Motion for Consolidation.
June 16,	First Amended Complaints of Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.
July 15,	Answer of Individual Defendants.
July 15,	Answer of Individual Defendants to Plaintiffs' Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.'s First Amended Complaint.
1977	
Mar. 25,	Motion to Dismiss filed by Individual Defendants.
Apr. 14,	Response by Plaintiffs' Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.'s to Motion to Dismiss.
June 9,	Order and Opinion granting Defendants' Motion to Dismiss.
June 20,	Motion for Reconsideration by Plaintiffs Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.

Relevant Docket Entries

DATE 1977	PROCEEDINGS
July 8,	Memorandum of Individual Defendants in Opposition to Plaintiffs' Motion for Reconsideration.
Aug. 30,	Order and Opinion denying Motion for Reconsideration.
Dec. 7,	Final Order dismissing consolidated action entered.
Dec. 14,	Judgment for Defendants entered.

Relevant Pleadings, Charges, Findings or Opinions

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057

II. RELEVANT PLEADINGS, CHARGES, FINDINGS OR OPINIONS*

A. COMPLAINT

Now comes COMPLETE AUTO TRANSIT, INC., by and through its attorneys, Matheson, Bieneman, Parr, Schuler & Ewald, and hereby complains against the Defendants as follows:

1. This action arises under Section 301 of the Labor Management Relations Act (29 U.S.C.A. 185), as Amended, which states in part:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter or between such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

2. Plaintiff, COMPLETE AUTO TRANSIT, INC., is a Michigan corporation with its principal place of business at Southfield, Michigan, which operates numerous terminal facilities throughout the Midwestern and Southern United States, including that located at G-3201 David Street, Flint, Michigan, in which it has invested a substantial sum of money for both terminal facilities and equipment. Plaintiff is a contract carrier operating pursuant to a Permit issued by the Interstate Commerce Commission and is engaged in the delivery, by motor carrier, of motor vehicles received from

* The relevant pleadings in No. 76-40059 and No. 76-40060 have not been included since they are similar to those filed in No. 76-40057.

General Motors Corporation at the aforementioned terminal facilities to dealerships throughout the Midwesterm and Southern United States. Plaintiff is thus engaged in interstate commerce within the meaning of the Labor Management Relations Act, 29 U.S.C.A. 185, and is also an "Employer" within the meaning of the same Act.

3. Local Union No. 332 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union") is a labor organization and has been and is the exclusive bargaining agent for a unit of drivers, yardmen and mechanics employed at Plaintiff's Flint, Michigan terminal facilities.

4. Defendants are members of the Union and are employed by Plaintiff at its Flint, Michigan facilities as drivers. Other unnamed defendants are members and persons represented by the Union and employed by Plaintiff at its Flint, Michigan facilities as drivers, yardmen and in other capacities and are so numerous that they cannot be named individually as defendants in this suit, but the bringing of the above-entitled action against the named defendants will sufficiently acquaint all defendants with the action herein brought and the relief sought.

5. Plaintiff and the Union are signatory to a collective bargaining agreement which is for the period September 1, 1973 through May 31, 1976. A copy of said agreement is attached hereto as Exhibit "A".

6. The agreement between Plaintiff and the Union provides, in part, the following provision in Article 7, Section 1, therein:

> "The Unions and Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employee * * * without first using all possible means of settlement, as pro-

vided in this Agreement, of any controversy which might arise."

Article 7 therein also provides a specific method of resolving any disputes which may arise between Plaintiff and the Union with the exception of certain specific matters, none of which are involved herein.

7. Plaintiff delegated the authority and power to negotiate a collective bargaining agreement for their entire trucking operation, including the above named terminal, the NATIONAL AUTOMOBILE TRANSPORTERS LABOR DIVISION, a multi-employer bargaining association which negotiates the terms and conditions of the National Master Automobile Transporters Agreement and its various supplemental agreements with the TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTER INDUSTRY NEGOTIATING COMMITTEE, (hereinafter "The Committee").

8. Local Union No. 332 has delegated the authority and power to negotiate the above-described collective bargaining agreement on its behalf and on behalf of all its members to The Committee.

9. Article 34 of Plaintiff's Exhibit "A" provides in part as follows:

"Section 1. This Agreement shall be in full force and effect from September 1, 1973, to and including May 31, 1976, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

"Section 2. Where no such cancellation or termination notice is served and the parties desire to

continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to May 31, 1976, or May 31 of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

"Section 3. Revisions agreed upon or ordered shall be effective as of June 1, 1976, or June 1 of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree thereon."

10. Plaintiff's Exhibit "A" remains in full force and effect for the reason that no written notice of desire to cancel or terminate the Agreement was served by either party in accordance with Article 34, Section 2, of Plaintiff's Exhibit "A".

11. Furthermore, Article 7, Section 2(a), of Plaintiff's Exhibit "A" states in part:

> "The provisions of this Article shall continue to apply during that period of time between the expiration of this Agreement and the conclusion of the negotiations or the effective date of the successor Agreement, whichever occurs later. It is understood and agreed that failure by the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, and/or the Joint Councils to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement."

Relevant Pleadings, Charges, Findings or Opinions

12. On May 21, 1976, representatives of the Committee and National Automobile Transporters Labor Division entered into an agreement whereby the National Master Automobile Transporters Agreement and all Supplements and Riders thereto were extended indefinitely. A duplicate original of that agreement is attached hereto as Plaintiff's Exhibit "B".

13. On June 8, 1976, at approximately 3:30 P.M., named and unnamed defendants commenced an unlawful refusal to work constituting a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility, which continues at the present time, contrary to the provisions of Article 7, of the Agreement between Plaintiff and the Union. The facts concerning the aforesaid work stoppage are attached hereto in the Sworn Affidavit of Robert Wright and made a part hereof as if set forth herein at length.

14. On June 8, 1976, Ted Wiedemann, Vice President in charge of Operations, offered on behalf of the Plaintiff, to resolve any and all disputes arising between Plaintiff and Plaintiff's employees, by utilizing the grievance machinery as provided in Article 7 of the aforementioned Agreement attached hereto as Exhibit "A". This offer was made to Roy Ashby, Business Representative of the Union.

15. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants herein without the aid and assistance or authorization of the Union; and the unlawful refusal of Defendants to perform work constitutes an unauthorized or wildcat strike.

16. The Defendants, by their participation in the unlawful work stoppage, are personally liable to the Plaintiff for any and all damages arising out of the work stoppage, including, but not limited to, lost profits, overhead, and attorneys fees.

Relevant Pleadings, Charges, Findings or Opinions

17. Plaintiff is prepared to resolve and settle any disputes as may exist that it has with the Union or Defendants arising out of the Agreement in the manner provided in the aforesaid Agreement.

18. Plaintiff has at all times fully performed its obligations under the Agreement. However, notwithstanding Plaintiff's efforts the Defendants herein are currently participating in or aiding and abetting or encouraging an unlawful refusal to work, which is causing a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility.

19. The aforementioned work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility has and is continuing to cause irreparable harm to Plaintiff and its customer, General Motors Corporation. Continuation of the aforementioned work stoppage and tie-up of equipment will cause irreparable harm to Plaintiff's relationship with General Motors Corporation since it has resulted in Plaintiff's failure to perform its legal obligations as a contract carrier to General Motors Corporation. Moreover, continuation of the aforementioned work stoppage and tie-up of equipment will cause General Motors to divert business originally tendered Plaintiff to other motor carriers, thus causing further irreparable injury to Plaintiff.

20. The aforementioned unlawful work stoppage and tie-up of equipment will continue unless relief is granted and the aforementioned work stoppage and tie-up of equipment is restrained by this Court.

21. With respect to each item of relief sought herein, greater injury will be inflicted upon the Plaintiff by the denial thereof then would be inflicted upon the Defendants by the granting thereof: that in fact, no injury can result to the Defendants by requiring them to desist from the commission of such acts which are unlawful and which the Defendants have no right to presume to do, and the granting of the relief sought herein will not deprive the Defen-

dants or any benefit to which they are entitled and merely will prevent them from performing acts which are in violation of the contract and the policy of the National Labor Relations Act.

22. The character and extent of injury to the Plaintiff is such that the Plaintiff will suffer substantial and serious loss of business and customer patronage and will suffer immediate, substantial, and irreparable injury such that damages cannot adequately compensate for the same. Plaintiff has no adequate remedy at law, and Plaintiff will continue to suffer immediate, substantial and irreparable injury inless relief is granted and the Defendants are restrained and enjoined from continuing the unlawful acts herein set forth.

WHEREFORE, Plaintiff prays judgment:

1. That Defendants and each of them and all persons in active concert or participation with the Defendants or any of them be temporarily and permanently enjoined and restrained as follows:

A. From engaging in any strike, work stoppage or concerted refusal to perform the normal duties of their employment with Plaintiff in breach of the collective bargaining agreement between the parties.

B. From concertedly refraining from performing their services at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equipment in breach of the collective bargaining agreement between the parties.

C. From inducing any of Plaintiff's employees to engage in a strike, work stoppage or concerted refusal to perform their services in breach of the collective bargaining agreement between the parties.

D. From engaging in picketing or mass assembly at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equipment in support of any strike or work stoppage in breach of the collective bargaining agreements between the parties.

2. For a mandatory injunction issued to Defendants and each of them to specifically perform the collective bargaining agreement and to require Defendants and each of them to terminate the existing strike, work stoppage and concerted refusal to perform services, to return to work and resume the performance of their services for the Plaintiff, and to submit any dispute to the grievance machinery provided for in the collective bargaining agreement.

3. That the Plaintiff be ordered to comply with its obligation to enter into arbitration with the Local Union as required by the attached collective bargaining agreement.

4. That the Court retain jurisdiction of this action pending final resolution of such disputes as may exist for the purpose of giving Plaintiff such further relief as may be necessary.

5. That the Court award damages against the Defendants, in their individual capacity, for all losses arising out of the unlawful work stoppage and for attorneys fees.

6. That Plaintiff obtain judgment for such other and further relief as may be equitable and just, together with costs.

Respectfully submitted,
R. Ian Hunter and C. John Holmquist
MATHESON, BIENEMAN, PARR, SCHULER & EWALD
100 West Long Lake Road - Suite 102
Bloomfield Hills, Michigan 48013
Phone: (313) 645-9600
By R. Ian Hunter

Dated: June 9, 1976

(Exhibits omitted in printing)
(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057

B. FIRST AMENDED COMPLAINT

Now comes COMPLETE AUTO TRANSIT, INC., by and through its attorneys, Matheson, Bieneman, Parr, Schuler & Ewald, and hereby complains against the Defendants as follows:

1. This action arises under Section 301 of the Labor Management Relations Act (29 U.S.C.A. 185), as Amended, which states in part:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter or between such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

2. Plaintiff, COMPLETE AUTO TRANSIT, INC., is a Michigan corporation with its principal place of business at Southfield, Michigan, which operates numerous terminal facilities throughout the Midwestern and Southern United States, including that located at G-3201 David Street, Flint, Michigan, in which it has invested a substantial sum of money for both terminal facilities and equipment. Plaintiff is a contract carrier operating pursuant to a Permit issued by the Interstate Commerce Commission and is engaged in the delivery, by motor carrier, of motor vehicles received from

General Motors Corporation at the aforementioned terminal facilities to dealerships throughout the Midwestern and Southern United States. Plaintiff is thus engaged in interstate commerce within the meaning of the Labor Management Relations Act, 29 U.S.C.A. 185, and is also an "Employer" within the meaning of the same Act.

3. Local Union No. 332 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union") is a labor organization and has been and is the exclusive bargaining agent for a unit of drivers, yardmen and mechanics employed at Plaintiff's Flint, Michigan terminal facilities.

4. Defendants are members of the Union and are employed by Plaintiff at its Flint, Michigan facilities as drivers. Other unnamed defendants are members and persons represented by the Union and employed by Plaintiff at its Flint, Michigan facilities as drivers, yardmen and in other capacities and are so numerous that they cannot be named individually as defendants in this suit, but the bringing of the above-entitled action against the named defendants will sufficiently acquaint all defendants with the action herein brought and the relief sought.

5. Plaintiff and the Union are signatory to a collective bargaining agreement which is for the period September 1, 1973 through May 31, 1976. A copy of said agreement is attached hereto as Exhibit "A".

6. The agreement between Plaintiff and the Union provides, in part, the following provision in Article 7, Section 1, therein:

> "The Unions and Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employee * * * without first using all possible means of settlement, as pro-

vided in this Agreement, of any controversy which might arise."

Article 7 therein also provides a specific method of resolving any disputes which may arise between Plaintiff and the Union with the exception of certain specific matters, none of which are involved herein.

7. Plaintiff delegated the authority and power to negotiate a collective bargaining agreement for their entire trucking operation, including the above named terminal, the NATIONAL AUTOMOBILE TRANSPORTERS LABOR DIVISION, a multi-employer bargaining association which negotiates the terms and conditions of the National Master Automobile Transporters Agreement and its various supplemental agreements with the TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTER INDUSTRY NEGOTIATING COMMITTEE, (hereinafter "The Committee").

8. Local Union No. 332 has delegated the authority and power to negotiate the above-described collective bargaining agreement on its behalf and on behalf of all its members to The Committee.

9. Article 34 of Plaintiff's Exhibit "A" provides in part as follows:

"Section 1. This Agreemnet shall be in full force and effect from September 1, 1973, to and including May 31, 1976, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

"Section 2. Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to

negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to May 31, 1976, or May 31 of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

"Section 3. Revisions agreed upon or ordered shall be effective as of June 1 1976, or June 1 of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree thereon."

10. Plaintiff's Exhibit "A" remains in full force and effect for the reason that no written notice of desire to cancel or terminate the Agreement was served by either party in accordance with Article 34, Section 2, of Plaintiff's Exhibit "A".

11. Furthermore, Article 7, Section 2(a), of Plaintiff's Exhibit "A" states in part:

> "The provisions of this Article shall continue to apply during that period of time between the expiration of this Agreement and the conclusion of the negotiations or the effective date of the successor Agreement, whichever occurs later. It is understood and agreed that failure by the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, and/or the Joint Councils to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement."

12. On May 21, 1976, representatives of the Committee and National Automobile Transporters Labor Division entered into an agreement whereby the National Master Automobile Transporters Agreement and all Supplements and Riders thereto were extended indefinitely. A duplicate original of that agreement is attached hereto as Plaintiff's Exhibit "B".

13. On June 8, 1976, at approximately 3:30 P.M., named and unnamed defendants commenced an unlawful refusal to work constituting a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility, which continues at the present time, contrary to the provisions of Article 7, of the Agreement between Plaintiff and the Union. The facts concerning the aforesaid work stoppage are attached hereto in the Sworn Affidavit of Robert Wright and made a part hereof as if set forth herein at length.

14. On June 9, 1976, Plaintiff herein filed a request for injunctive relief in this Court in Civil Action No. 76-40057 against all of the above-named Defendants, except for Local Union 332, and requested a temporary restraining order. This Court on June 9, 1976 denied the request for the ex parte temporary restraining order and issued an Order to Show Cause Why a Preliminary Injunction should not be issued for Monday, June 14, 1976, at 2:00 p.m. At that time a hearing was conducted by this Court at the conclusion of which it issued an opinion from the bench denying the request by Plaintiff for a Preliminary Injunction by finding, in part, that the strike involved a dispute between Defendants and their union and, therefore, did not constitute an arbitrable issue. Based upon this finding the Court held that it was not empowered to issue injunctive relief pursuant to the "*Boys Market*" decision reached by the United States Supreme Court in 398 U.S. 235.

15. On June 15, 1976, representatives of Plaintiff were advised by representatives of the National Automobile

Transporters Labor Division that the tentative agreement reached by representatives of the National Automobile Transporters Labor Division and the Teamsters National Automobile Transporters Industry Negotiating Committee had been rejected by the affected membership including Defendants. Accordingly, the aforementioned representatives are reconvening negotiations for the purpose of reaching another tentative agreement.

16. On Tuesday, June 15, 1976, a representative of Local 332, Roy Ashby, as well as unnamed Defendants, approached Ralph Thompson, Vice President of Plaintiff, with a written agreement setting forth the demands of the striking employees of the Plaintiff as well as other companies wherein it demanded that in exchange for returning to work the striking employees shall be assured of no discipline, reprisals, penalties or fines imposed against them by Plaintiff and the other companies on strike. A copy of this document is attached hereto as Plaintiff's Exhibit "C".

17. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants, other than Local 332, without the aid and assistance or authorization of Defendant Local 332 in its initial stages; provided, however, representatives of Local 332 have accompanied representatives of the other Defendants in submission of the proposed agreement attached hereto as Exhibit "C" and described in the affidavit of Ralph Thompson, which is attached hereto and incorporated herein.

18. Plaintiff is prepared to resolve and settle any disputes as may exist that it has with the Union or Defendants arising out of the Agreement in the manner provided in the aforesaid Agreement.

19. Plaintiff has at all times fully performed its obligations under the Agreement. However, notwithstanding Plaintiff's efforts the Defendants herein are currently par-

ticipating in or aiding and abetting or encouraging an unlawful refusal to work, which is causing a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility.

20. The aforementioned work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility has and is continuing to cause irreparable harm to Plaintiff and its customer, General Motors Corporation. Continuation of the aforementioned work stoppage and tie-up of equipment will cause irreparable harm to Plaintiff's relationship with General Motors Corporation since it has resulted in Plaintiff's failure to perform its legal obligations as a contract carrier to General Motors Corporation. Moreover, continuation of the aforementioned work stoppage and tie-up of equipment will cause General Motors to divert business originally tendered Plaintiff to other motor carriers, thus causing further irreparable injury to Plaintiff.

21. The aforementioned unlawful work stoppage and tie-up of equipment will continue unless relief is granted and the aforementioned work stoppage and tie-up of equipment is restrained by this Court.

22. With respect to each item of relief sought herein, greater injury will be inflicted upon the Plaintiff by the denial thereof then would be inflicted upon the Defendants by the granting thereof; that in fact, no injury can result to the Defendants by requiring them to desist from the commission of such acts which are unlawful and which the Defendants have no right to presume to do, and the granting of the relief sought herein will not deprive the Defendants of any benefit to which they are entitled and merely will prevent them from performing acts which are in violation of the contract and the policy of the National Labor Relations Act.

23. The character and extent of injury to the Plaintiff is such that the Plaintiff will suffer substantial and serious loss

of business and customer patronage and will suffer immediate, substantial, and irreparable injury such that damages cannot adequately compensate for the same. Plaintiff has no adequate remedy at law, and Plaintiff will continue to suffer immediate, substantial and irreparable injury unless relief is granted and the Defendants are restrained and enjoined from continuing the unlawful acts herein set forth.

WHEREFORE, Plaintiff prays judgment:

1. That Defendants and each of them and all persons in active concert or participation with the Defendants or any of them be temporarily and permanently enjoined and restrained as follows:

A. From engaging in any strike, work stoppage or concerted refusal to perform the normal duties of their employment with Plaintiff in breach of the collective bargaining agreement between the parties.

B. From concertedly refraining from performing their services at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equipment in breach of the collective bargaining agreement between the parties.

C. From inducing any of Plaintiff's employees to engage in a strike, work stoppage or concerted refusal to perform their services in breach of the collective bargaining agreement between the parties.

D. From engaging in picketing or mass assembly at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equip-

ment in support of any strike or work stoppage in breach of the collective bargaining agreements between the parties.

2. For a mandatory injunction issued to Defendants and each of them to specifically perform the collective bargaining agreement and to require Defendants and each of them to terminate the existing strike, work stoppage and concerted refusal to perform services, to return to work and resume the performance of their services for the Plaintiff, and to submit any dispute to the grievance machinery provided for in the collective bargaining agreement.

3. That the Plaintiff be ordered to comply with its obligation to enter into arbitration with the Local Union as required by the attached collective bargaining agreement.

4. That the Court retain jurisdiction of this action pending final resolution of such disputes as may exist for the purpose of giving Plaintiff such further relief as may be necessary.

5. That the Court award damages against the Defendants, in their individual capacity, for all losses arising out of the unlawful work stoppage and for attorneys fees.

6. That Plaintiff obtain judgment for such other and further relief as may be equitable and just, together with costs.

Respectfully submitted,
R. Ian Hunter and C. John Holmquist
MATHESON, BIENEMAN, PARR, SCHULER & EWALD
100 West Long Lake Road - Suite 102
Bloomfield Hills, Michigan 48013
Phone: (313) 645-9600
By (s) R. IAN HUNTER

Dated: June 16, 1976

(Exhibits omitted in printing)

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
EASTERN DISTRICT
NORTHERN DIVISION AT BAY CITY

(Title Omitted in Printing)
No. 76-40057

C. ANSWER

COMES NOW, Defendants, Danny Reis, Larry Keller, Virgil Williams, John Sealey and John Lamb, and all other Defendant members of Local Union Number 332 employed by Plaintiff (hereinafter all referred to as Defendant employees), by and through their attorneys, Draper, Daniel, Ruhala & Seymour, P.C., and in response to Plaintiff's Complaint, replies as follows:

1. That in answer to Paragraph 1, Defendant employees admit the allegations contained therein.

2. That in answer to Paragraph 2, Defendant employees admit Plaintiff is engaged in interstate commerce within the meaning of the Labor Management Relations Act, 29 U.S.C.A. 185 and also an employer within the meaning of the Act. That in answer to the remaining allegations contained in Paragraph 2, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

3. That in answer to Paragraph 3, Defendant employees admit the allegations contained therein.

4. That in answer to Paragraph 4, Defendant employees admit that the named Defendants are members of the Union and are employed by the Plaintiff at its Flint, Michi-

gan, facility as drivers. That in answer to the remaining allegations contained therein, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

5. That in answer to Paragraph 5, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

6. That in answer to Paragraph 6, Defendant employees admit the allegations contained therein. Defendant employees affirmatively state, however, that at all material times herein, that no dispute existed between themselves individually or collectively and their employer, but that any and all disputes existed between the Defendant employees and their Union, Local No. 332, and that the disputes between Defendant employees and their Union are not subject to the provisions set forth in Article 7 and its subsections of the Labor Agreement.

7. That in answer to Paragraph 7, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

8. That in answer to Paragraph 8, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

9. That in answer to Paragraph 9, Defendant employees admit that Article 34 is as set forth and stated in Paragraph 9.

10. That in answer to Paragraph 10, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

11. That in answer to Paragraph 11, Defendant employees deny the allegations contained therein, inasmuch as they are untrue. The Defendant employees affirmatively state that the language set forth in Paragraph 11 is encompassed as only a part of and one of the provisions contained in Article 7, Section 2(a).

12. That in answer to Paragraph 12, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

13. That in answer to Paragraph 13, Defendant employees admit a work stoppage did occur at Plaintiff's Flint, Michigan, facility. That Defendant employees state that any determination of its lawfulness or unlawfulness of the refusal to work is a legal conclusion, and that such is not a proper allegation to plead in the Complaint in accordance with the Federal Rule of Civil Procedure Rule 8(a), (e) and 10(b). That insofar as it is concluded the aforementioned allegations are not legal conclusions, Defendant employees deny said allegation as untrue, and affirmatively state that at all material times herein they were engaged in concerted and protected activities. That Defendant employees deny that the work stoppage continues to the present time, inasmuch as that is untrue; Further, Defendant employees deny that the dispute could be settled and is a subject of the procedures set forth in Article 7 of the Collective Bargaining Agreement. That in answer to the remaining allegations contained therein, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond and therefore, leave Plaintiff to its proofs.

14. That in answer to Paragraph 14, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowlege or information with which to respond, and therefore, leave Plaintiff to its proofs.

15. That in answer to Paragraph 15, Defendant employees admit Local Union No. 332 did not aid, assist or authorize the work stoppage or a tie-up of any equipment. That with respect to the remaining allegations contained therein, they are legal conclusions and are not proper allegations to plead in the Complaint in accordance with the Federal Rules of Civil Procedure Rules 8(a), (e) and 10(b). That insofar as it is concluded that the remaining allegations are not legal conclusions, Defendant employees deny said allegations as untrue and affirmatively state that at all material times herein they were engaged in concerted and protected activities.

16. That in answer to Paragraph 16, Defendant employees state that the allegations contained therein are legal conclusions and are not proper allegations to plead in the Complaint in accordance with the Federal Rules of Civil Procedure Rules 8(a), (e) and 10(b). That insofar as it concluded, the allegations are not legal conclusions, Defendant employees deny the allegations contained therein as untrue and affirmatively state that at all material times herein, they were engaged in concerted and protected activities.

17. That in answer to Paragraph 17, Defendant employees deny that they had any dispute with Plaintiff. Further, Defendant employees state at all material times herein, that any and all existing disputes are with Defendant, Local Union No. 332. Defendant employees affirmatively

state that the disputes that they have with Defendant Union No. 332 are not any that arise out of the Agreement or subject to resolution by the procedures set forth in the Labor Agreement.

18. That in answer to Paragraph 18, Defendant employees neither admit nor deny the allegation that Plaintiff has at all times fully performed its obligations under the Agreement, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs. Defendant employees admit that a work stoppage did occur; However, Defendant employees deny that a work stoppage is presently occurring, inasmuch as it is untrue. That Defendant employees state the allegation concerning the lawfulness or unlawfulness of the refusal to work is a legal concluison and not a proper allegation to plead in the Complaint in accordance with the Federal Rules of Civil Procedure Rules 8(a), (e) and 10(b). That insofar as it is concluded, the allegations are not a legal conclusion, Defendant employees deny the allegation as untrue and affirmatively state at all material times herein, they were engaged in concerted and protected activities.

19. That in answer to Paragraph 19, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

20. That in answer to Paragraph 20, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient information and knowledge with which to respond, and therefore, leave Plaintiff to its proofs.

21. That in answer to Paragraph 21, Defendant employees deny the allegations contained therein, as they are untrue.

22. That in answer to Paragraph 22, Defendant employees deny the allegations contained therein, as they are untrue.

WHEREFORE, Defendant employees pray that this Honorable Court conclude and find:

1st. That Plaintiff has failed to state a cause of action against Defendant employees, and

2nd. That the Complaint be dismissed with prejudice against Defendant employees, and

3rd. That Defendant employees have fully complied with the Temporary Injunctive Order of this Court obtained by Plaintiff and that Defendant employees have returned to work, and

4th. That Plaintiff having obtained the Injunctive relief which it sought in the Complaint, is not entitled to any of the other relief requested in its Prayer for Relief, including monetary damages, costs and attorney fees, and

5th. That the Complaint be dismissed with prejudice, the issues having become moot, and

6th. That Defendant employees be entitled to any other such relief as may be equitable and just.

Respectfully submitted,

(s) Hiram S. Grossman, (P-14425)
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717 South Grand Traverse
Flint, Michigan 48502
Telephone: (313) 235-2581

DATED: July 12, 1976

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
NORTHERN DIVISION AT BAY CITY

(Title Omitted in Printing)
No. 76-40057

D. ANSWER TO FIRST AMENDED COMPLAINT

COMES NOW, Defendants, Danny Reis, Larry Keller, Virgil Williams, John Sealey and John Lamb, and all other Defendant members of Local Union No. 332 employed by Plaintiff (hereinafter referred to as Defendant employees), by and through their attorneys, Draper, Daniel, Ruhala & Seymour, P.C., and in response to Plaintiff's First Amended Complaint, replies as follows:

That in answer to Paragraphs 1-13 and 18-23 of the First Amended Complaint, Defendant employees incorporates by reference as if fully and completely set forth its Answers to the original Complaint, in the following numerical order:

1. That in answer to Paragraphs 1-13 of the First Amended Complaint, Defendant employees' Answers to Paragraphs 1-13 of the original Complaint are incorporated by reference as if fully and completely set forth.

2. That in answer to Paragraphs 18-23 of the First Amended Complaint, Defendant employees' Answers to Paragraphs 17-22 of the original Complaint are incorporated by reference as if fully and completely set forth in the following numerical order, Paragraphs 18, 19, 20, 21, 22 and 23 of the First Amended Complaint as set forth in Defendant employees' Answers to Paragraphs 17, 18, 19, 20, 21 and 22 of the original Complaint.

14. That in answer to Paragraph 14, Defendant employees admit the allegations contained therein.

15. That in answer to Paragraph 15, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

16. That in answer to Paragraph 16, Defendant employees admit that a copy of the document was presented to Plaintiff's representative. That in response to the remaining allegations contained therein, Defendant employees state that the document which is known as Plaintiff's Exhibit C best speaks for itself as to its terms and conditions as they are set forth and denies that the characterization of the terms as set forth in Paragraph 16 are accurate or complete.

17. That in answer to Paragraph 17, Defendant employees admit the allegations contained therein. That Defendant employees state that because of the failure and refusal of Plaintiff's representative to negotiate directly with Defendant employees, it became necessary to have representatives of Local Union No. 332 become involved in the presentation of Exhibit C.

WHEREFORE, Defendant employees prays that this Honorable Court conclude and find:

1st. That Plaintiff has failed to state a cause of action against Defendant employees, and

2nd. That the Complaint be dismissed with prejudice against Defendant employees, and

3rd. That the Defendants have complied with the Temporary Injunctive Order requested by Plaintiff and have returned to work, and

4th. That Plaintiff, having obtained the Injunctive relief which it sought in the Complaint, is not entitled to any of the other relief requested in its Prayer for Relief, including monetary damages, costs and attorney fees, and

5th. That the Complaint be dismissed with prejudice the issues having become moot, and

6th. That Defendant employees be entitled to any other such relief as may be equitable and just.

Respectfully submitted,

(s)Hiram S. Grossman (P-14425)
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DATED: July 12, 1976

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

E. MOTION TO DISMISS

COMES NOW Defendants, Local 332 members by and through their attorneys, Draper, Daniel, Ruhala & Seymour, P.C., and moves this Honorable Court to dismiss the above-entitled causes of action for the following reasons:

1. That the striking employees of Automobile Carriers, Inc., F. J. Boutell Driveaway Co., Inc. and Complete Auto Transit, Inc. returned to work on and after June 21, 1976.

2. That the employees of F. J. Boutell Driveaway Co., Inc., Automobile Carriers, Inc., and Complete Auto Transit, Inc. are and have continuously remained at work since then.

3. That the only remaining issue in each of the three above-entitled causes of action is the issue of damages and that *United Steel Corporation* v *United Mine Workers Local 6321*, F 2d ; 94 LERM 2049 (3rd Cir Dec. 1976 (No. 76-1060) is dispositive of this issue in holding Plaintiff employers were not entitled to damages where the original dispute causing or precipitating the strike was not over an arbitrable issue.

4. That the above-entitled causes are moot, the employees having previously returned to work on June 21, 1976, and having remained working continuously thereafter and the *United Steel Corporation* decision being dispositive of the damage issue, the only remaining issue outstanding.

WHEREFORE, Defendants respectfully request that an Order be entered by this Court dismissing with prejudice Civil Action Numbers 76-40057; 76-40059 and 76-40060.

Respectfully submitted,

(s) Hiram S. Grossman
Attorney for Defendant
DRAPER, DANIEL, RUHALA & SEYMOUR, P.C.
717 South Grand Traverse
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Telephone: 235-2581

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

F. PLAINTIFFS' RESPONSE TO MOTION TO DISMISS

COME NOW Plaintiffs, Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Company, Inc. by and through their attorneys, Matheson, Bieneman, Parr, Schuler & Ewald, in response to Defendants' Motion to Dismiss state as follows:

1. Defendants returned to work on or about June 21, 1976, after being so ordered by this Court in the instant action.

2. Defendants have continued to work since the time of the entrance of the preliminary injunction by this Court.

3. Plaintiffs deny each and every allegation contained in paragraph 3 of the Motion to Dismiss.

4. Plaintiffs deny each and every allegation contained in paragraph 4 of the Motion to Dismiss.

WHEREFORE, Plaintiffs respectfully request that this Court dismiss Defendants' Motion to Dismiss for the reasons set forth in Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss.

Respectfully submitted,

(s) R. Ian Hunter, P-15279
C. John Holmquist, Jr., P-25996
Attorney for Plaintiffs
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Telephone: (313) 645-9600

Dated: April 13, 1977

(Affidavit of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

G. MOTION FOR RECONSIDERATION

COME NOW Plaintiffs Complete Auto Transit, Inc., F. J. Boutell Driveaway Co., and Automobile Carriers, Inc., and move this Court to reconsider and amend its order of June 8, 1977 for the following reasons:

1. The maintenance of a damage action against the individual Defendants is not barred by federal labor law and does not violate congressional policy since Defendants acted solely as individuals in derogation of their collective bargaining representative and not as agents or representatives.

2. The dismissal of the preliminary injunction for the reasons stated is inconsistent with established federal labor law.

3. This Court's finding that the preliminary injunction was improper is inconsistent with federal labor law.

4. Given the significance of the issues involved herein, Plaintiffs request that this Court schedule oral argument on this Motion.

WHEREFORE, Plaintiffs urge this Court to modify its Order by reinstating the damage action against the individual Defendants and by reinstating the preliminary injunction.

Respectfully submitted,

(s) C. John Holmquist, Jr., P-25996
R. Ian Hunter, P-15279
Attorney for Plaintiffs
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Telephone: (313) 645-9600

Dated: June 17, 1977

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

H. MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION

THE COURT CORRECTLY APPLIED *BUFFALO FORGE* IN DISSOLVING THE PRELIMINARY INJUNCTION AGAINST DEFENDANT EMPLOYEES.

In *Buffalo Forge* v *United Steelworkers of America*, 428 U.S. 94, S. Ct 3141 92 LRRM 3032 (1976), the Supreme Court focused its inquiry to what precipitated the strike. It asked the question whether the underlying dispute "causing" or "precipitating" the strike that was subject to the parties' contract grievance and arbitration procedure; it answered the question in the negative. In arriving at its determination, it examined what caused the strike. The Supreme Court found the strike was not over any dispute between the employer and union that was remotely subject to the arbitration provisions of the contract, it further found:

> "Neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents' at 92 LRRM 3036.

In the case at bar, the dispute that "caused" and "precipitated" the withholding of Defendants' services to their respective employers was the dispute with their union, the Local 332 and the International Brotherhood of Teamsters.

Relevant Pleadings, Charges, Findings or Opinions

Subsequent to the Supreme Court's issuance of *Buffalo Forge* decision, other corurts have had an opportunity to interpret and apply *Buffalo Forge* as it limited the use and availability of *Boys Markets, Inc.* v *Retail Clerks Local 770*, 398 US 235 1970, type injunction. In *U.S. Steel Corp.* v *United Mineworkers Local 6321,* F2d , 94 LRRM 2049, (3rd Cir. 1976) the Court focuses on the fact the strike was not "precipitated by" or "over" and arbitrable dispute between the employer and striking union. Additionally, it found that in order for the work stoppage to be enjoinable the dispute that precipitated the work stoppage must be subject to binding arbitration. Likewise, in *Southern Ohio Coal Co.* v *United Mineworkers,* F2d , 94 LRRM 2609 (6th Cir. 1977), the Court states *Boys Markets* permits a narrow exception to the section 4 Norris-La Guardia Act 19 USCA Sec. 104; and that narrow exception is where the strike is over a dispute both parties are contractually bound to arbitrate. The Court concludes the dispute "causing" or precipitating the strike was not an arbitrable dispute, and thus, an injunction would not lie.

The dispute "precipitating" or causing the strike in the case at bar did not have the purpose or effect of denying or evading an obligation to arbitrate or depriving the employer of his bargain that was spoken of in *Buffalo Forge* and in *Southern Ohio Coal*. The work stoppage was precipitated by a dispute continued unabated to and beyond the date this Court ordered Defendant employees back to work.

THE COURT CORRECTLY APPLIED THE LAW IN DISMISSING THE DAMAGE ACTION AGAINST THE INDIVIDUAL EMPLOYEE DEFENDANTS FOR THEIR ALLEGED BREACH OF THE COLLECTIVE BARGAINING AGREEMENT.

The Court's conclusion dismissing Plaintiff's claims for monetary relief against individual Defendants is well taken

and supported. In *Sinclair Oil Corporation* v *Oil Chemical & Atomic Workers Int'l Union* 452 F2d 49 (CA 7, 1971); 78 LRRM 2603, 2606, the Court stated:

> "We agree with Sinclair that the legislative history and Congressional debates show a concern for the promotion of industrial peace through making unions liable for breaches of their bargaining agreements and to encourage bargaining of no-strike clauses in the agreements. But we do not agree that Congress through a no-strike clause would be valueless unless the employer were authorized to recover damages against individual union members engaging in wildcat strikes. On the contrary, Congress, in the debates over Section 301, explicitly considered the problem of wildcat strikes and possible remedies. The remedies suggested were discharge and discipline. There is no indication that Congress considered Section 301 itself a remedy for an aggrieved employer. We think for us to do so would constitute an unwarranted expansion of that Section."
>
> "Moreover, Congress did consider the consquences of imposing financial responsibility on union members who engaged in non-tortious unprotected concerted activity as union members, in breach of a no-strike clause, and rejected it. We think the implication is that such employees are nct liable - under Section 301 - for such a breach even if the union did not authorize the strike."
>
> 'Neither Congress nor the Supreme Court has been persuaded by the argument, advanced here by Sinclair, that employers' recovery of damages against wildcat strikers would serve the national labor policy of encouraging peaceful settlements of labor disputes. As pointed out by Justice Brennan in deciding that injunctive relief will lie against a union for breach of a no-strike clause, and award of dam-

> ages is not an effective remedy for an employer faced with an illegal strike and "would only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union." *Boys Markets* v *Clerk Union*, 398 U.S. 235, 248, 74 LRRM 2257 (1970)." 78 LRRM 2603 at 2606

Subsequently, in *Eazor Express, Inc.*, v *International Brotherhood of Teamsters*, 520 F2d 951, 961 N. 5 (CA 3, 1975) 89 LRRM 3177, 3184, *Cert denied* 424 US 935, *rehearing denied* 425 US 908 (1976)), another opportunity was presented to decide the issue if individual employee Defendants should be held individually repsonsible for damages caused by an authorized work stoppage in breach of the collective bargaining agreement; the Court held individual employee Defendants should not be held liable. In arriving at its determination, the Court stated:

> "Although such an agreement is binding on the individual union members, the employer has no action for damages against them individually for their breach of the agreement where the union has been adjudged liable for the damages from the breach. Atkinson v. Sinclair Refining Co., 1962, 370 U.S. 238, 249, 50 LRRM 2433. Further, it has been held that the employer is in any event without a remedy for damages for breach of contract against individual union members who have engaged in a wildcat strike. *Sinclair Oil Corp.* v. *Oil, Chemical and Atomic Workers International Union*, (7 Cir. 1971), 452 F2d 49. 78 LRRM 2603."

The cases relied upon by Plaintiff in its brief to support its position are not well reasoned decisions. In *Alloy Cast Steel Co.* v *United Steelworkers of America*, F. Supp , 92 LRRM 2266 (N.D. Ohio 1976); F. Supp , 95 LRRM 2033 (N.D. Ohio 1977) you are not certain whether the Court held the way it did because the Defendant

employees breached the no strike provisions of the contract or because they violated the Court's Order by not returning to work as ordered. 95 LRRM 2033, 37 In *DuQuoin Packing Co.* v *Meat Cutters, et al of North America,* 321 F. Supp 1230 (ED - Ill 1971), 77 LRRM 2574, the Court unwarrantedly presumes that Section 301 only exempts Defendant employees form personal liability for Judgments against the union when they are acting or participating in a plan emanating from headquarters. The legislative history does not support the Court's conclusion that Section 301 was designed only to protect against a reoccurrence of the Danbury Hatters situation. The language of Section 301 neither suggests nor supports the conclusion individual Defendant employees can be held responsible for monetary damages even if they breach the collective bargaining agreements no-strike language.

CONCLUSION

For the foregoing reasons, Defendants urge this Court to deny Plaintiffs' Motion for Reconsideration and reaffirm the Court's Memorandum Opinion and Order dated June 8, 1977, in the above-entitled cause of action.

Respectfully submitted,

BY: (s) HIRAM S. GROSSMAN (P-14425)
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DATED: July 8, 1977

(Affidavit of Service Omitted in Printing)

IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-1777

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No. 79-1777

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,*

-vs-

DANNY REIS, et al.,
Respondents.**

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondents, respectfully pray that this Honorable Court affirm the opinion and judgment of the United States Court of Appeals for the

*Petitioners, who were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc.

**Respondents are present and former employees of the Petitioners who were represented by Teamsters Local 332, affiliated with the International Brotherhood of Teamsters and who were employed by Petitioners at their Flint, Michigan facilities. The following individuals were designated as Plaintiffs in the consolidated action: Danny Reis, Larry Keller, Virgil Williams, John Sealey and John Lamb (Complete Auto Transit); Delbert Addison, Michael Boudreau, Donald Sears and Gerald Soupal (Auto mobile Carriers, Inc.); Joseph A. Hardacre, Carl S. Letts, Herman C. McCullough, Dennis Stockinger and Edward G. Warner (F.J. Boutell Driveaway Co., Inc.)

Sixth Circuit entered in this proceeding in February 8, 1980 and deny Petitioners' Petition for the issue of a Writ of Certiorari.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet officially reported, appears unofficially at 103 LRRM 2722, and is appended in Petitioners' Petition at APP. A, pp 1a-13a. The opinions of the District Court granting the Motion to Dismiss and denying the Motion for Reconsideration are not reported. They are appended in Petitioners' Petition, respectively as App. B and App. C, pp 15a-19a and pp 19a-21a.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on February 8, 1980. Petitioners' Petition for Certiorari was timely filed within 90 days of that date. Jurisdiction of this Court is invoked under 29 USC Sec. 1254(1). Respondents' brief in opposition to Petition for Certiorari has been timely filed within thirty (30) days after receipt of Petition

for Writ of Certiorari.

COUNTER QUESTION PRESENTED

May employees be liable in their individual capacities to their employer in monetary damages for their alleged breach of the collective bargaining agreement under Section 301(b) of the Labor Management Relations Act 2, 29 USCA Section 185 b?

STATUTE INVOLVED

This case involves Section 301 of the Labor Management Relations Act, 61 Stat. 156, 29 USC Section 185, printed in the Appendix at App. p la.

STATEMENT OF THE CASE

Complete Auto Transit, Inc., Automobile Carriers, Inc., and F.J. Boutell Driveaway Co., Inc., Petitioners, brought this action pursuant to Section 301 of the Labor Management Act (29USC Section 185) against named and unnamed employees for injunctive and monetary relief as a result of the employees' withholding of their employment services.

STATEMENT OF FACTS

The employers are engaged in the transportation by truck of newly manufactured motor vehicles. All are signatory to an identical collective bargaining agreement entitled the National Master Automobile Transporters Supplemental Agreement which covered their operations.

The employees are drivers and other individuals employed at the employers' Flint, Michigan facilities who are members of Teamsters Local 332. Teamsters Local 332 is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Teamsters Local 332 is a signatory to the collective bargaining agreement with the companies and the Local 332 and the International Union are the exclusive bargaining agency for the employees.

On June 8, 1976, the employees of Complete Auto Transit ceased working. On June 10, the employees of the other two companies engaged

in similar cessation of work. The companies filed the instant action pursuant to Section 301 seeking injunctive relief and damages from the employees. On June 14, 1976, the District Court, after a hearing, denied the companies' request for injunctive relief. The District Court found that the underlying dispute was between the union and its members and therefore not arbitrable under the agreement. The District Court also found that the strikes had not been authorized by the International Union. (Petitioners' App. A, 2a)

On June 16, 1976, the companies filed amended complaints, renewing their request for injunctive relief. After a hearing on the motions on June 21, 1976, the District Court found that the dispute between the union and its members had been resolved and that the only remaining issue pertained to the employees' demand for amnesty from the companies which is arbitrable under the collective bargaining agreement. The District Court concluded that

the work stoppages violated the no-strike clause and that the requirements for injunctive relief were present.

THE PROCEEDINGS BELOW

L. THE DISTRICT COURT

In March of 1977, the employees moved for the dismissal of the consolidated actions. The motion asserted that the request for damages did not state a valid claim for relief. The District Court granted the motion and held that the employees could not be sued for monetary relief in their individual capacities since such relief would frustrate the Congressional purpose behind Section 301 of shielding union members from individual liability. (Petitioners' App. B, 17a)

The companies moved for the reconsideration of the dismissal of the action. The District Court denied the motion. The District Court found the reasoning in Sinclair Oil Corp. v Oil, Chemical, & Atomic Workers Int'l. Union, 452 F2d 49 (7th Cir. 1971) to be in harmony

with the intent of Congress in passing Section 301 and rejected the companies' contention that the Appeals Court in Sinclair had improperly construed the legislative history.

2. THE APPEALS COURT

Upon appeal, the Court of Appeals for the Sixth Circuit affirmed the dismissal of the damage action. The Appeals Court discussed the Seventh Circuit's decision in Sinclair Oil, supra, and agreed with that court's interpretation of the legislative history of Section 301. The Seventh Circuit had concluded that Congress did not intend to create a cause of action under Section 301 for damages against individual union members for breach of the no-strike agreement because of the concern to avoid a repetition of the Danbury Hatters cases.[1] The Appeals Court rejected the contention that this Court's statements in Smith v Evening News Association,

[1]See Loewe v Lawlor, 208 U.S. 274 (1908); Lawlor v Loewe, 235 U.S. 552 (1915), and Loewe v Savings Bank of Danbury, 236 F. 444 (2d Cir. 1916), aff'd, 242 U.S. 357 (1917).

371 U.S. 195 (1962) and Hines v Anchor Motors Freight, Inc., 424 U.S. 554 (1976) involving individual actions arising out of the contract violations by employers supported the existence of a damage action against individual employees. (Petitioners' App. A, 13a)

REASONS FOR DENYING WRIT

I. THERE IS NO CONFLICT BETWEEN ANY COURT OF APPEALS ON THE ISSUE OF EMPLOYEE LIABILITY IN THEIR INDIVIDUAL CAPACITY FOR THEIR ALLEGED BREACH OF THE COLLECTIVE BARGAINING AGREEMENT; ALL COURTS OF APPEAL HAVE CONCLUDED NO INDIVIDUAL LIABILITY. THERE IS NO OVERRIDING ISSUE OF FEDERAL LAW NECESSITATING THIS COURT'S DETERMINATION OF THE ISSUE.

The Sixth Circuit's decision is in harmony with the Seventh Circuit's decision in Sinclair Oil Corp. v Oil, Chemical and Atomic Workers International Union, 452 F. 2d 49, 79 LRRM 2603 (7th Cir 1971) and a subsequently decided Sixth Circuit decision United Steelworkers of America v Lorraine, A Division of Kehring Co., __F. 2d__, 103 LRRM 2637 (6th Cir. 1980). There

are no conflicting decisions emanating from any Circuit Court on the issue of employee liability in their individual capacities for alleged breach of the collective bargaining agreements.

The issue presented in the instant case has been raised in a few District Court proceedings and there has been conflicting determinations.[2] Considering the number of instances the issue could be presented for judicial consideration and determination, and the few times District Courts have been faced with the issue, it must be concluded the issue is not

[2] For cases prohibiting actions against individual employees, see e.g. Westingtonhouse Electric Corp. v Electrical Workers, 470 F. Supp. 1298 (W.D. Pa. 1979); Benada Aluminum Products Co. v United Steel Workers, 83 Lab. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); United States Steel Corp. v UMW, Local 8003, 83 Lab. Cas. (CCH) Par. 10, 612 (D. Utah 1978); Lakeshore Motor Freight v Steel Haulers Local 800, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, __F. Supp. ____; 104 LRRM (W.D. Pa. 1980) 2152. For Cases allowing damage actions against individual employees, see, e.g. Certain-Teed v Local 37A, United Steelworkers of America, __F. Supp. ____, 103 LRRM 2052 (N.D. Pa. 1980); Alloy Cast Steel Company v United Steelworkers, 429 F. Supp. 445 (N.D. Ohio 1977); Du Quoin Packing Company v P-156 Amalgamated Meat Cutters and Butcher Workers of North America, 321 F. Supp. 1230 (E.D. Ill. 1971).

widespread or of national concern requiring this Court's determination. Also it must be concluded that it is not in the public interest for this Court to resolve the issue.

If employees were liable in their individual capacities for alleged breaches of the collective bargaining agreement, there would not be an improvement in the viability or stability of collective bargaining relationships nor would peaceful resolution of industrial disputes be furthered; in fact the contrary would probably be true. Presently employers have effective means of dealing with alleged employee breaches. The employer can obtain an injunction if the underlying dispute is subject to the collective bargaining agreement. Boys Markets, Inc. v Retail Clerks Union, Local 770, 398 U.S. 235 at 254 (1970); Buffalo Forge Co. v United Steelworkers of America , 428 U.S. 397 at 407 (1976), and where the activity is unprotected the employer can discipline employees up to their discharge. Emporium Capwell Co. v Western

Addition Community Organization, 420 U.S. 50 at 72 (1875); Atkinson v Sinclair Refining Company, 350 U.S. 238 at 246 (1962).

For all of the above reasons, the Court should conclude there is no necessity for it to grant the writ and determine the issue of employee liability in their individual capacity for their alleged breaches of the collective bargaining agreement.

II. THE SIXTH CIRCUIT'S DECISION IS CONSONANT WITH THE PRINCIPLES SET FORTH IN THIS COURT'S DECISIONS THAT HAVE FASHIONED THE SUBSTANTIVE LABOR LAW.

The Sixth Circuit's decision correctly construed and applied federal labor policy and is consistent with this Court's prior holdings in Textile Workers Union of America v Lincoln Mills of Alabama, 353 U.S. 448 (1957); Smith v Evening News Association, 371, U.S. 195 (1962); Hines v Anchor Motor Freight, Inc., 424 U.S. 554 (1976). The

Sixth Circuit's review of Smith and Hines correctly concluded that neither case stood for the proposition nor is authority for holding it was Congress' intention to create a cause of action for damages against individual employees. In arriving at its conclusion, the Sixth Circuit properly construed each case and assigned to each decision its proper significance. Likewise, the Sixth Circuit attached the proper significance to the decision in Lincoln Mills.

In both Lincoln Mills at 456 and Smith at 199 this Court held that Section 301 has substantive content and that Congress had authorized the Federal Courts to fashion a body of federal law in suits involving alleged violations of the collective bargaining agreements. In Smith at 200 and Hines at 562 this Court concluded Section 301 contemplated and included the coverage of actions involving suits by and against individual employees.

The Sixth Circuit's construction of Smith

and Hines was correct and proper; the Sixth Circuit's decision captures the essence of this Court's decisions in Smith and Hines as they pertain to the development of federal substantive law. Smith at 200 and Hines at 562 acknowledge under Section 301 an employee may sue or be sued for alleged breaches of a collective bargaining agreement and to enforce uniquely personal rights of each under the contract. However, the Sixth Circuit's decision is correct in concluding that the holdings in Smith and Hines as to the reaches of Section 301 does not embrace a money damage action by the employer against its employees in their individual capacities. The Sixth Circuit's determination is, in fact, consistent with this Court's decision in Smith and Hines as well as Congressional intent in creating Section 301 and the rights it intended to establish.

The Sixth Circuit's decision does not establish a gap in the uniform enforcement

of collective bargaining agreements. The Sixth Circuit's decision recognizes that both the employer and employees have access to the Courts to seek enforcement of alleged breaches of the collective bargaining agreement. The employer is able to obtain injunctive relief of alleged employee contractual breaches. Boys Markets, Inc. v Retail Clerks Union Local 770, supra at 254 and the employer is able to exercise the self help remedy of discharge if their employees' action is unprotected. Emporium Capwell Co. v Western Addition Community Organization, supra at 72; Atkinson v Sinclair Refining Company, supra, at 246.

The Sixth Circuit's analysis and decision comports with this Court's decisions in Lincoln Mills, Hines and Smith and is consistent with the language of Section 301 and congressional intention in creating Section 301.

III. THE SIXTH CIRCUIT'S DECISION CORRECTLY INTERPRETED THE LEGISLATIVE

HISTORY OF SECTION 301.

The Sixth Circuit concurred with the construction given by the Seventh Circuit to the legislative history of Section 301 in Sinclair Oil Corp. v Oil, Chemical and Atomic Workers International Union, 452 F. 2d 49 (7th Cir. 1971) (Pet. App. A, 13a). The Seventh and Sixth Circuits properly construed the congressional policy behind the enactment of Section 301 and the legislative history of Section 301 as it related to the issue of employee liability in monetary damages in their individual capacity for alleged breaches of the collective bargaining agreement.

In Sinclair the Seventh Circuit rejects the employer's argument that an implied right exists in Section 301 permitting an employer to sue its employees in their individual capacities for money damages for alleged breaches of the collective bargaining agreement. In reaching its decision, the Seventh Circuit relies upon the language of Section 301(b),

the legislative history surrounding the enactment of Section 301 and the "spectre" of the "Danbury Hatters" decisions upon congressional thinking at the time of the enacting of Section 301. 452 F. 2d at 52. The Seventh Circuit rejected the employer's argument that the legislative history supports a congressional authorization of an employer suit for monetary damages against its employees in their individual capacities. 452 F. 2d at 52. The Seventh Circuit rejected the employer's argument that an implied authorization for such suit exists. The Seventh Circuit found the legislative history of Section 301 indicates congressional principal concerns were to make the unions as a party to the collective bargaining agreement repsonsible for breaches and to avoid subjecting individual union members to the fiscal ruin that confronted the members in the "Danbury Hatters" decision. 452 F. 2d at 52.

The Seventh Circuit rejected the employer's

argument that the no-strike clause in the parties' collective bargaining agreement would be valueless without the employer being able to recover damages against individual employees engaging in wildcat strikes. The Seventh Circuit pointed out Congress in its debates over Section 301 explicitly considered the problem of wildcat strikes and possible remedies; the remedies Congress suggested were discharge and discipline. The Seventh Circuit was unable to find in the congressional debate nor was it willing to assume a congressional intention where none existed that Section 301 be considered as a remedy itself by permitting an employer to recover damages against individual employees for engaging in a wildcat strike. 452 F. 2d at 54.

The Seventh Circuit held:

"We think for us to do so would constitute an unwarranted expansion of that section." 452 F. 2d at 54.

The Seventh Circuit concluded that Congress had considered and rejected the consequences of imposing financial responsibility on union members who engaged in non-tortious unprotected concerted activity as union members by such action as breaching a no-strike clause. Therefore, the Seventh Circuit concluded the implication is that such employees are not liable under Section 301 for breaches such as engaging in a wildcat strike in contravention of a no-strike clause even if the union did not authorize the strike. 452 F. 2d at 54.

In Boys Markets this Court pointed out in deciding injunctive relief would lie against a union for breach of a no-strike clause in the parties' collective bargaining agreement, an award of damages is not an effective remedy for an employer faced with an illegal strike and

> "(W)ould only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union." 398 U.S. at 248.

The Sixth Circuit was correct in concurring with the Seventh Circuit decision in Sinclair. Congress was well aware of the problems an employer might have in enforcing a breach of its no-strike against its employees; but when it enacted Section 301 it did not intend to subject union members engaging in wildcat strikes to individual liability for damages. The employer's primary remedies are obtaining injunctive relief as in Boys Markets, supra 248, or discipline or discharge of individual employees engaging in unprotected activities. Atkinson v Sinclair Refining Company, supra at 246 (1962); Emporium Capwell Co v Western Addition Community Organization, supra at 72.

For all the stated reasons this Court should conclude the Sixth Circuit correctly interpreted the legislative history of Section 301.

IV. THIS COURT'S DECISION IN CARBON FUEL COMPANY V UNITED MINEWORKERS

OF AMERICA DOES NOT DIMINISH THE EMPLOYER'S ABILITY TO OBTAIN JUDICIAL RELIEF FROM ALLEGED EMPLOYEE BREACHES OF THE COLLECTIVE BARGAINING AGREEMENT.

This Court's decision in Carbon Fuel Company v United Mineworkers of America, __ U.S. __ 62 L. Ed 2d 394 (1979) has not altered in any respect the employer's ability to seek enforcement of the terms of the collective bargaining agreement against its employees who may have allegedly breached its terms. One of the basis this Court originally granted certiorari in Carbon Fuel was there was a conflict between the Fourth Circuit and Third Circuit as to the standards to apply in determining what standards should be used in determining the effort a union must exert to obtain an end to the unauthorized strike in order to avoid the imposition of liability. 62 L. Ed. 2d 398. This Court's decision in Carbon Fuel resolved this conflict. The Carbon Fuel decision set forth the standard to

be used in determining if a union should be held financially liable for money damages in an action brought by an employer for alleged breaches of the collective bargaining agreement by its employees. The Carbon Fuel decision set forth the type of acts and conduct a union must have been involved in before it can be held financially liable. 62 L. Ed 2d 400.

This Court's decision in Carbon Fuel in no way alters the employer's remedies against its employee for engaging in conduct in violation of the no-strike provisions of the collective bargaining agreement. The employer has the ability to enjoin the breaches of the collective bargaining agreement as afforded it in Boys Markets, supra at 254 the right to discipline or discharge employees engaging in unprotected activity as afforded it in Atkinson v Sinclair Refining Company, 370 U.S. at 246; Emporium Capwell Co. v Western Addition Community

Organization, supra at 72.

This Court's decision in Carbon Fuel only clarified the employer's right to obtain money damages against the union representing its employees after a conflict arose between the Fourth and Third Circuit; this Court's decision in no way diminished nor disturbed the employer's rights agaisnt its employees who have allegedly breached the no-strike provisions of the parties' collective bargaining agreement.

In the instant case, the employers long before Carbon Fuel was decided opted on their own not to pursue monetary damages against the local (Petitioners' App. A. 9a). Thus, this Court's decision in Carbon Fuel does not contribute to nor make any more important the issue of individual employee damages for alleged breaches of the contract.

CONCLUSION

For the foregoing reason, Respondents'

respectfully submit Petitioners' Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

SUBCHAPTER IV - LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purpose of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and pro-

ceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

June 23, 1947, c. 120, Title III, § 301, 51 Stat. 156.

No. 79-1777

SUPREME
FILED
NOV
MICHAEL ROD

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Are employees who engaged in a work stoppage in violation of the collective bargaining agreement and who acted without the authorization of their union individually liable for damages sustained by their employer arising out of their breach of the collective bargaining agreement?

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IN THE
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OCTOBER TERM, 1979

NO. 79-1777

COMPLETE AUTO TRANSIT, INC., et al.,

*Petitioners,**

-vs-

DANNY REIS, et al.,

*Respondents.***

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 614 F.2d 1110 and is reprinted at App. A, pp. 1a-13a, of the Appendix to the Petition herein. The opinions of the United States District Court for Eastern District of Michigan, Southern Division

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* Petitioners, who were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc.

** Respondents are present and former employees of the Petitioners who were represented by Teamsters Local 332, affiliated with the International Brotherhood of Teamsters and who were employed by Petitioners at their Flint, Michigan facilities at the time of the work stoppages. The following individuals were designated as named Plaintiffs in the consolidated action: Danny Reis, Larry Keller, Virgil Williams, John Sealy and John Lamb (Complete Auto Transit); Delbert Addison, Michael Boudreau, Donald Sears, and Gerald Supal (Automobile Carriers, Inc.); Joseph A. Hardacre, Carl S. Letts, Herman C. McCullough, Dennis Stockinger and Edward G. Warner (F. J. Boutell Driveaway Co., Inc.).

granting the Motion to Dismiss and denying the Motion for Reconsideration are not reported and are reprinted respectively at App. B, pp. 15a-19a and App. C, pp. 19a-21a of the Appendix to the Petition herein.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1). The judgment of the Court of Appeals was entered on February 8, 1980. The Petition herein was filed on May 7, 1980 and granted on October 14, 1980.

STATUTE INVOLVED

This case involves §301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185 which is set forth in its entirety at App. D, pp. 21a-23a of the Petition herein. The pertinent provisions are set forth below.

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents

in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsibile for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

STATEMENT OF THE CASE

Federal Jurisdiction

Complete Auto Transit, Inc., Automobile Carriers, Inc., and F.J. Boutell Driveaway Co., Inc., Plaintiffs below, brought this action pursuant to §301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185(a) against named and unnamed employees for injunctive and monetary relief as a result of the employees' participation, without the authorization of their local union, in a work stoppage in violation of the no-strike clause of the collective bargaining agreement to which all parties were bound. The cases were consolidated for the hearing on the request for injunctive relief.

Statement of Facts

The companies are engaged in the transportation by truck of newly manufactured motor vehicles. (App. A, 2a)[1] All were signatory to an identical collective bargaining agreement entitled the National Master Automobile Transporters Agreement and Central and Southern Conference

[1] References to the appendices to the Petition herein are designated as "App., a". References to the Joint Appendix are designated "J.A. ".

Areas Supplemental Agreements which covered their operations, including their Flint, Michigan facilities. (J.A. 14, ¶5; 16, ¶10; 23, ¶5; 24, ¶10; App. A, 2a)[2] The collective bargaining agreement contained a no-strike clause and a provision required the submission of all disputes to the grievance procedure for resolution. (J.A. 14-15, ¶6; 23, ¶6; App. A, 2a)

The defendants are drivers and other individuals who were employed at the companies' Flint, Michigan facilities in June of 1976 and who were members of Teamsters Local 332. (J.A. 14 ¶4; 22-23, ¶4) Teamsters Local 332 is the exclusive bargaining agent for the employees and is signatory to the collective bargaining agreement with the companies. (J.A. 14, ¶3; 22, ¶3; App. A, 2a)

On June 8, 1976, the employees of Complete Auto Transit engaged in an unauthorized work stoppage. (J.A. 8, ¶13; 8, ¶15; 18, ¶17; 24, ¶13; 25, ¶15; App. A, 2a; Tr. 120)[3] On June 10, 1976, the employees of the other two companies engaged in similar unauthorized strike activity. (App. A, 2a; Tr. 121)

The companies filed the instant actions, which were subsequently consolidated, pursuant to 29 U.S.C. §185(a) requesting injunctive relief and damages from the employees. The companies alleged that the work stoppages were in violation of the collective bargaining agreement and were not authorized by the local union. [4]

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[2] The collective bargaining agreement is found in the record as Exhibit A attached to the Complaint of Complete Auto Transit, Inc.

[3] References to the transcript of the June 14, 1976 hearing on the request for injunctive relief are designated "Tr. ". The transcript is found in the record.

[4] The allegations pertaining to the unauthorized nature of the work stoppage and to the request for damages read as follows:

> 15. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants herein without the aid and assistance or authorization of the Union; and the unlawful refusal of Defendants to perform work constitutes an unauthorized or wildcat strike.
>
> 16. The Defendants, by their participation in the unlawful work stoppage, are personally liable to Plaintiff for any and all damages arising out of the work stoppage, including, but not limited to, lost profits, overhead, and attorneys fees. (J.A. 8)

On June 14, 1976, the District Court, after a hearing, denied the companies' request for injunctive relief. The District Court found that the underlying dispute was between the union and its members and therefore was not arbitrable under the agreement. (App. A, 2a)

On June 16, 1976, the companies filed amended complaints renewing their request for injunctive relief and damages against the employees. (J.A. 13, *et seq.*) After a hearing on June 21, 1976, the District Court issued preliminary injunctions. The District Court found that the dispute between the union and its members had been resolved and that the only remaining issue pertained to the employees' demand for amnesty from the companies which was arbitrable under the collective bargaining agreement. The District Court concluded that the work stoppages violated the no-strike clause and that the requirements for injunctive relief were present. (App. A, 3a)

On July 12, 1976, the employees filed their answers to the original and amended complaints. The employees admitted that the local union did not aid, assist or authorize the work stoppages. (J.A. 25, ¶15; 29, ¶17)

The Proceedings Below

1. The District Court

In March of 1977, the employees moved for the dismissal of the consolidated actions. (J.A. 31)[5] The motion asserted that the companies were not entitled to damages when the dispute which caused the strike was not over an arbitrable issue. The District Court granted the motion and held that the employees could not be sued for monetary relief in their individual capacities since such relief would frustrate the Congressional purpose of shielding union members from individual liability. (App. B, 16a, 17a)

---

[5] The motion also sought to have the injunctions dissolved. Since the only issue raised herein is the dismissal of the damage action, discussion of the lower courts' treatment of the injunction issue has been omitted.

The companies moved for the reconsideration of the dismissal of the action. (J.A. 35)[6] The District Court denied the motion. The District Court found the reasoning in *Sinclair Oil Corp.* v. *Oil, Chemical, & Atomic Workers Int'l. Union*, 425 F.2d 49 (7th Cir. 1971) to be in harmony with the intent of Congress in passing §301 and rejected the companies' contention that the Appeals Court in *Sinclair* had improperly construed the legislative history. (App. C, 20a)

2. The Appeals Court

The Court of Appeals for the Sixth Circuit affirmed the dismissal of the damage action. The Appeals Court discussed the Seventh Circuit's decision in *Sinclair Oil, supra*, and agreed with that court's interpretation of the legislative history of §301. (App. A, 10a, 13a) The Appeals Court stated that the Seventh Circuit had concluded that Congress did not intend to create a cause of action under §301 for damages against individual union members for breach of the no-strike agreement. The Seventh Circuit's conclusion was based on its interpretation of the legislative history of §301 and its perception of the Congressional intent to avoid a repetition of the *Danbury Hatters* cases. [7] The Appeals Court reviewed this Court's decisions in *Smith* v. *Evening News Association*, 371 U.S. 195 (1962) and *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) and rejected the contention that either case supported the existence of a damage action against individual employees for their breach of the no-strike agreement. (App. A, 13a)

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[6] In their motion for reconsideration, the companies argued that the damage action did not violate Congressional policy because the employees acted as individuals in derogation of their union rather than as its agents. (J.A. 35, ¶1)

[7] See *Loewe* v. *Lawlor*, 208 U.S. 274 (1908); *Lawlor* v. *Loewe*, 235 U.S. 522 (1915) and *Loewe* v. *Savings Bank of Danbury*, 236 F.444 (2d Cir. 1916), aff'd, 242 U.S. 357 (1917).

SUMMARY OF ARGUMENT

The Labor Management Relations Act of 1947 was enacted in response to widespread labor unrest which caused concern in Congress over the continued viability of the collective bargaining process. Section 301 (a) represented the attempt to provide a forum in federal court wherein labor organizations could sue and be sued. The statutory recognition of the collective bargaining agreement as valid and binding contract was considered a necessary step in promoting industrial peace.

The Appeals Court's construction of the legislative history and its emphasis upon the effect of the *Danbury Hatters* cases are not applicable to the instant factual situation. Congress intended to protect individuals from monetary liability when they act as agents of their union or when the union acts without the members' knowledge or authority. There is nothing in the legislative history that would support the Appeals Court's determination that Congress intended to extend this same protection to employees who act in their individual capacity in violation of the collective bargaining agreement. The limitation of an individual's liability was carefully and specifically delineated by Congress.

The Appeals Court did not correctly interpret or apply the decisions of this Court which have involved the construction and the interpretation of §301. The Appeals Court failed to recognize that the issue presented lies in the penumbra of the express statutory mandate and failed to resolve the issue by reconciling the policy of the statute with the problem presented. This Court's decisions recognize that employees as well as unions may sue and be sued under §301. Such a result is consistent with the legislative purpose. The refusal to recognize that an employer may sue its employees for their individualized, unauthorized breaches of the collective bargaining agreement thwarts the Congressional purpose as interpreted by this Court.

No justification can be found in either the language of §301 or its legislative history for the result of the Appeals Court's decision which relegates the employer's rights to a lesser degree of protection. The Appeals Court's decision establishes a gap in the uniform enforcement of collective bargaining agreements. Individual employees are given access to the federal courts for the vindication and the preservation of contractural rights while an employer is denied similar access when seeking to redress the damages unlawfully inflicted upon it. As a result, the Congressional policy of furthering industrial peace through the development and maintenance of the collective bargaining process is frustrated and the status of the collective bargaining agreement as a valid, binding, and enforceable agreement is diminished. Employees who violate with impunity the terms of a collective bargaining agreement should bear the consequences of their actions.

ARGUMENT

I. THE APPEALS COURT'S DECISION INCORRECTLY AND ERRONEOUSLY INTERPRETED THE LEGISLATIVE HISTORY OF SECTION 301.

In affirming the District Court's dismissal of the damage action against the employees, the Appeals Court concluded that the legislative history of Section 301 indicates that Congress did not intend to create a cause of action for damages against individual union members. (App. A, 13a) The analysis and the conclusion of the Appeals Court of the legislative history fails to place the Congressional concern over individual liability into the proper prospective. Congress was indeed concerned about individual liability but that concern arose from a factual situation far different from that which confronted the Appeals Court in the instant case. The concern of Congress was to insulate individuals from monetary liability because of actions taken by labor organizations as demonstrated in the *Danbury Hatters* cases. See, e.g., 93 Cong. Rec. 6283 (1947) (Rep. Case)

The analysis of the Appeals Court of the legislative history of §301 was, at best, superficial. The decision of the Appeals Court typifies the inexplicable failure of the courts to distinguish between a *Danbury Hatters* factual situation and a factual situation where union members act as individuals and not as agents for their union. See, e.g., *Putnam Fabricating Co.* v. *Null*, — F.2d —, 105 LRRM 2645 (4th Cir. 1980); *Westinghouse Electric Corp.* v. *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979). The Congressional concern that is manifested in §301(b) and (e) did not extend to employees acting in their individual capacity and in derogation of their bargaining representative.

Examination of the legislative history is necessary since the express language of the statute does not specifically deal with the issue presented. The Appeals Court's analysis of the legislative history was defective from the outset since it failed to properly characterize the issue and to distinguish the instant factual situation from the factual situation in *Danbury Hatters* that confronted Congress. The Appeals Court incorrectly framed the issue as one involving individual liability for a violation of the contractural no-strike clause where there was *no attempt* to recover from the union. (App. A, 10a) The Appeals Court did not place sufficient emphasis on the undisputed fact that the work stoppages were not authorized by either the International or local union. No attempt was made to recover from the union because there was no legal basis for recovery given the absence of its authorization or ratification of the work stoppages.

A. The Congressional Purpose Behind the Enactment of §301 Was to Make Collective Bargaining Agreements Binding and Enforceable Upon the Parties.

In enacting the Taft-Hartley Act, Congress was concerned with several interrelated concerns. The statute was intended to reduce the large number of strikes that had occurred, strengthen the collective bargaining procedure, and equalize the balance of power between employers and

unions. 29 U.S.C. §141 (b), 61 Stat. 136; H.R. Rep. No. 245, 80th Cong., 1st Sess. 3-6 (1947); S. Rep. No. 105, 80th Cong. 1st Sess. 1-3 (1947). §301 was enacted to provide for enforcement of collective bargaining agreements and to eliminate the possibility of holding individuals liable where the union, as an entity, is responsible for the contractural breach.

In the analysis of the provisions which authorized suits in federal court contained in the report from the Committee on Education and Labor,[8] the concern of the committee that labor organizations be held responsible for contract violations was clearly expressed. The report stated:

> When labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens. Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other party must assume his. H.R. Rep. No. 245 at 46.

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[8] The provisions of the H.R. 3020 concerning suits against labor organizations and the liability of labor organizations for the actions of its agent read as follows:

> Sec. 302.(a) Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought by either party in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has had jurisdiction of the cause.
>
> (b) Any labor organization whose activities affect commerce shall be bound by the acts of its agents, and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. H.R. 3020, 80th Cong., 1st Sess. §302(a) & (b) (as reported)

The Senate was also concerned with the enforceability of collective bargaining agreements. S. Rep. No. 105 at 15. The report from the Committee on Labor and Public Welfare stated that the Senate proposal[9] would make agreements equally enforceable on both parties. The report stated:

> If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.
>
> Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against

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[9] The provisions of S. 1126 pertaining to suits against labor organizations and the liability of labor organizations read as follows:

> Sec. 301(a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> (b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act may sue or be sued in its common name in the courts of the United States: *Provided*, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. S. 1126, 80th Cong., 1st Sess. §301(a) and (b) (as reported)

> unions as legal entities in the Federal courts in disputes affecting commerce. S. Rep. No. 105 at 16.

The Senate report also reflected the concern that until labor organizations were recognized as legal entities by all jurisdiction entities, the mutual responsibility needed to make collective bargaining agreements viable would be missing. The necessity for enforceability was stated as follows:

> Statutory recognition of the collective bargaining agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace. S. Rep. No. 105 at 17.

The debate in the Senate concerning §301(a) revealed that one of the major purposes of the section was to overcome the procedural difficulties that existed in some states when an employer attempted to sue a union. 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 5014 (1947) (Senator Ball).[10] The debate also revealed the overriding concern that existed in Congress that collective bargaining agreements must be enforceable and binding upon the parties. 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 4410 (1947) (Senator Taft). Senator Taft stated:

> What is the purpose of Title III? The purpose of Title III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective-bargaining agreement—exactly the same subject matter which is contained in Titles I and II. 93 Cong. Rec. 4141 (1947).

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[10] By treating labor organizations as legal entities, Congress overcame the common law rule which precluded labor organizations from being sued because of their status as unincorporated associations. See, Cox, *Some Aspects of the Labor Management Relations Act*, 1947, 61 Harv. L. Rev. 274, 303-04 (1948); Kozub, *Wildcat Strikers: Individual Liability Under Section 301?*, 3 Indus. Rel. L. J. 671, 673 (1979)

The Senate and House reports as well as the statements of Senator Taft establish that the underlying purpose of §301(a) was to provide a mechanism to insure that a collective bargaining agreement would remain a viable institution in the framework of national labor policy by allowing the parties access to federal court to enforce it. The promotion of "a higher degree of responsibility" upon the parties was viewed as being crucial to the promotion of industrial peace. S. Rep. No. 105 at 17.

B. The Appeals Court Misconstrued the Significance of the Congressional Concern Over Individual Liability.

In rejecting the argument that a damage action could be brought against the individual employees, the Appeals Court stated that the specter of the *Danbury Hatters* cases "haunted the minds of the lawmakers." (App. A, 11a) Although the Appeals Court made reference to several statements made during the Senate debate,[11] it failed to properly apply that concern to the factual situation confronting it.

There can be no doubt that Congress was concerned with the consequences of individual liability arising from breaches of the collective bargaining agreement. The legislative history reveals the intent of Congress to prohibit individual liability where the union had induced, authorized, or ratified the actions of its agents or where the union had acted without the knowledge of its members. Congress condemned individual liability when the members were held responsible for the actions of their leaders. H.R. Rep. No. 245 at 46; S. Rep. No. 105 at 16; 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 5014 (1947) (Senator Ball); 93 Cong. 6283 (1947) (Rep. Case); see, Note, *Section 301 of the Labor Management Relations Act–Individual Liability of Employees for An Unauthorized Work Stoppage In Breach of the No-Strike Clause of a Collective Bargaining Agreement*, 18 Wayne L. Rev. 1657, 1664-1666 (1972).

[11] 92 Cong. Rec. 5705 (Senator Taft); 93 Cong. Rec. 5014 (Senator Ball)

In the *Danbury Hatters* cases, individual union members were held liable for the damages caused by a nationwide boycott of a hat manufacturer directed by their union. In enacting §301(b), Congress prevented the repetition of the *Danbury Hatters* situation by providing for union liability for union wrongs. The clear intent was to prevent individual member liability for the union's action.

The instant case does not fall within the Congressional intent as manifested in §301(b). The employees herein were not sued because of their actions as agents of their union or because of the actions of their union. The work stoppages in which the employees participated were not authorized or ratified by their union. The employees were sued for their individual breaches of the collective bargaining agreement.

Apart from the legislative history concerning the *Danbury Hatters* cases, the Appeals Court does not support its finding with references to the legislative history in support of its conclusion. Indeed, no support could be cited because none exists. Congress intended to protect individuals from monetary liability when they are acting as agents of their union or when their union acted without the members' knowledge or authority. Neither situation is present in this case. There is nothing in the legislative history that supports the "conclusion" of the Appeals Court that Congress intended to extend this same protection to individuals who act in their own individual capacity and not as agents of their union. The Appeals Courts' finding can not be reconciled with the legislative purpose of promoting a higher degree of responsibility on parties to collective bargaining agreements. S. Rep. No. 105 at 17.

C. The Appeals Court's Conclusion That the Only Remedy Available to an Employer Confronted With an Unauthorized Work Stoppage in Violation of the No-Strike Clause is Discipline Has No Basis in the Legislative History of §301.

Although recognizing that one of the purposes behind the enactment of the Taft-Hartley Act was the promotion of

labor peace by making unions responsible for their actions, the Appeals Court concluded that there appeared to be no corresponding purpose to make individuals liable for breaches of the no-strike clause which was not authorized by the union. (App. A, 10a) The Appeals Court engaged in a limited review of its own of the legislative history of §301 and relied almost exclusively upon the Seventh Circuit's interpretation of the legislative history set forth in *Sinclair Oil Corp.* v. *Oil, Chemical & Atomic Workers*, 452 F.2d 49 (7th Cir. 1971). The Appeals Court's decision reflects its concern over the *Danbury Hatters* cases and the subsequent Congressional disapproval of the result. The preoccupation of the Appeals Court with *Danbury Hatters* is predictable because of the way the Appeals Court framed the issue before it. The issue was framed in terms that did not foreclose a finding of agency between the employees and their union. The Appeals Court did not emphasize or even acknowledge that the factual situation presented in this case was far different from that in *Danbury Hatters* or before the Seventh Circuit in *Sinclair*. (App. A, 9a-10a) By adopting the Seventh Circuit's conclusion, the Appeals Court avoided reconciling the legislative purpose of §301 with the factual situation confronting it.

Because the Appeals Court adopted the reasoning and the conclusion of the Seventh Circuit in *Sinclair*, the Seventh Circuit's decision must be reviewed. The Seventh Circuit recognized that the language of §301 did not expressly prohibit or authorize damage suits against union members who engage in wildcat strikes. 452 F.2d at 52. Under the Seventh Circuit's interpretation of the legislative history, the principal concern of Congress was with making unions, as parties to collective bargaining agreements, responsible for breaches and to avoid a repetition of subjecting individual members to "financial ruin." 452 F.2d at 52.

The Seventh Circuit's analysis of the Congressional concerns which lead to the enactment of §301(b) is simply not dispositive of the issue of whether individual members

were intended to be shielded from liability for their own, unauthorized breaches of the collective bargaining agreement under §301(a). Rather than acknowledging that the debate under §301 focused on the issue of union liability and that the issue of individual liability was not addressed specifically by Congress, the court concluded that Congress had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages. 452 F.2d at 54. The Seventh Circuit's recitation of the legislative history does not support its conclusion.

The only specific references made by the Seventh Circuit in *Sinclair* in support of its conclusion of the exclusivity of discipline are to the Senate debate over the Case bill[12] which was a forerunner of the Taft-Hartley Act. 452 F.2d at 53. The Seventh Circuit emphasized that Senator Taft stated that wildcat strikers ought to be disciplined if they prevented a "responsible labor leader" from fulfilling his agreement and that the proposed amendment would enable leaders to "avoid wildcat strikers." 452 F.2d at 53.

The Seventh Circuit's interpretation of Senator Taft's statement is at best questionable. The statement of Senator Taft followed a statement of Senator Capehart which used the example of fines against miners by their union for refusal to work in accordance with the contract. Taft's response indicates that he agreed that a union should be able to fine members who interfere with a labor leader's administration of a contract.[13] The Seventh Circuit's use of

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[12] H.R. 4908, 79th Cong., 2d Sess. (1946)(vetoed in 1946)

[13] The full exchange between Senators Capehart and Taft reads as follows:

> Mr. Capehart. I believe I am correct in the statement that in many miners' contracts an agreement is contained that if any member of the union pulls a wild-cat strike or a sitdown strike, or refuses to work, he is automatically fined by the union, and I think the fine has been as high as $6 a day. I think it will be found today that such provisions are contained in miners' contracts, by which they try to discipline their own members by fining them $2, or $4, or $6

(Continued on Page 17)

this exchange concerning finds by unions against their members as definitive support that discipline is the sole remedy available to the employer is unfounded and unwarranted. See, 18 Wayne L. Rev. at 1664-65, 6 Ga. L. Rev. 797, 801 (1972).

Given the clear legislative concern that existed for parties to be bound by the terms of a collective bargaining agreement, an argument can be made that if Congress meant to restrict an employer's remedy, it would have enacted specific legislation or broadened §301(b). An equally reasonable implication that can be drawn from the legislative history is that Congress intended not to restrict an employer's remedies against employees who engaged in unauthorized work stoppages in violation of the collective bargaining agreement. 18 Wayne L. Rev. at 1665-66.

The conclusion of the Seventh Circuit and the Appeals Court that Congress had no intention of authorizing individual damage actions in the instant factual situation is based on a faulty premise. The conclusion is not supported by the legislative history because Congress actually had no opinion on the issue. The debate focused on union liability and the reasons why such liability or at least the availability of a suit was necessary. Neither the express language of §301 nor its legislative history precludes a damage action against individuals in the present case.

The Congressional concerns that are manifested by the legislative history of §301 are two-fold. Congress sought to

(Footnote [13] Continued from Page 16)
a day if they refuse to work according to the terms of the collective bargaining contract.

Mr. Taft. Yes, I think so. Generally, this particular provision has been approved by the labor people. They feel, and I feel, that a responsible labor leader who wants to keep his contract should not be hampered by the fact that members of the union whom he cannot control put on a wildcat strike. Four or five men can tie up an entire plant — and it has happened repeatedly — if they happen to be in a crucial spot. Those are the men who ought to be disciplined if they prevent a responsible labor leader from carrying out his collective-bargaining contract. 92 Cong. Rec. 5706 (1946).

make all parties—unions and employees—responsible in their actions and accountable for their actions. Congress also intended for individual union members to be insulated from liability for union wrongs. The Appeals Court erred in failing to consider these Congressional objectives in making its determination that no damage action could be maintained. An action against the employees in this case, based on the undisputed nature of the unauthorized contract violation, would do no harm to the Congressional objectives. Indeed, such an action serves to assure future uninterrupted operation for the companies while securing the higher degree of responsibility upon parties, in this case, employees, to a collective bargaining agreement.

II. THE AVAILABILITY OF A DAMAGE REMEDY AGAINST INDIVIDUALS WHO PARTICIPATE IN AN UNAUTHORIZED WORK STOPPAGE IS CONSISTENT WITH THIS COURT'S DECISIONS INTERPRETING §301.

The Appeals Court reviewed this Court's decisions in *Smith* v. *Evening News Ass'n.*, 371 U.S. 195 (1962) and *Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976) and concluded that neither case is authority for holding that Congress intended to create a cause of action for damages against individual employees. (App. A, 12a-13a). In so holding, the Appeals Court has misinterpreted the significance of those decisions as well as the meaning and intent of *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448 (1957).

In *Lincoln Mills*, this Court interpreted Section 301(a) to authorize federal courts to fashion a body of law for the enforcement of collective bargaining agreements. 353 U.S. at 451. The concern of Congress was to establish a procedure for making such agreements enforceable in federal court. This Court stated that the substantive law to be applied is federal law which the courts must fashion from the policy of our national labor laws. 353 U.S. at 456. A

narrow reading of §301 as being only jurisdictional would defeat the policy underlying §301. This Court recognized that although some substantive law was furnished in the Labor Management Relations Act,

> Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. 353 U.S. at 457.

On several occasions this Court has reviewed the policy underlying §301 in the context of the lower courts' exercise of judicial inventiveness. In *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), this Court was presented with the issue of whether §301 operated to divest a state court of jurisdiction over a suit for a violation of a collective bargaining agreement. In holding that federal jurisdiction was not exclusive, this Court examined the legislative history of §301 and found that the basic purpose was to expand the availability of forums for the enforcement of collective bargaining agreements. 368 U.S. at 508. This Court also recognized that the Congressional purpose of promoting industrial peace through the encouragement of the collective bargaining process would be frustrated unless the parties to collective bargaining agreements "could have reasonable assurance that the contract they negotiated would be honored." 368 U.S. at 509.

In *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962), this Court reviewed the legislative purpose underlying §301(b) in the context of a damage action against a union and its officers and members. The issue of individual liability was not reached because the individuals were alleged to be acting as agents for the union. 370 U.S. at 247, 249 n. 7. §301(b) was intended by Congress to insure that the union as an entity and not the individual members would be held responsible for union wrongs.

In *Smith* v. *Evening News Ass'n.*, 371 U.S. 195 (1962), the employer argued that an action by an employee to collect wages in the form of damages was not among the suits envisioned by Congress to fall within §301. In rejecting this argument, this Court gave explicit recognition to the fact that individual claims often lie at the "heart" of the contractural grievance procedure and are "intertwined" with the interests of the union. 371 U.S. at 200. This Court rejected the argument that §301 excluded all suits brought by employees rather than unions. The word "between" in §301(a) refers to "contracts" and not to "suits." 371 U.S. at 200; see also, *Republic Steel Corporation* v. *Maddox*, 379 U.S. 650, 657, n. 7.

In *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), this Court again addressed the purpose and the scope of §301. This Court stated:

> Section 301 contemplates suits by and against individual employees as well as between unions and employers; and contrary to earlier indications §301 suits encompass those seeking to vindicate "uniquely personal" rights of employees such as wages, hours, overtime pay, and wrongful discharge. (*Smith* citation omitted) Petitioners' present suit against the employer was for wrongful discharge and is the kind of case Congress provided for in §301. 424 U.S. at 562.

The present action is one which the employers submit is warranted as a remedy under *Lincoln Mills* because it will effectuate the policy behind the enactment of §301. The availability of a damage action will further the Congressional policy of insuring that parties to a collective bargaining agreement abide by the terms of the agreement by placing sanctions behind such agreements.

The companies sought "judicial inventiveness" from the District Court and the Appeals Court but were unsuccessful. The attempt was based upon this Court's recognition

that parties to a collective bargaining agreement—unions, employees, and companies—can enforce their respective rights under the agreement in federal court under §301. See, e.g., *Boys Markets, Inc.* v. *Retail Clerk's Union, Local 770,* 398 U.S. 235 (1970) (employer); *Hines* v. *Anchor Motor Freight, Inc.,* 424 U.S. 554 (1976) (employees); *General Drivers, Local 89* v. *Riss & Co.,* 372 U.S. 517 (1963) (union and employees); *Gateway Coal Co.* v. *United Mineworkers of America,* 414 U.S. 368 (1974) (employer); *Textile Workers of America* v. *Lincoln Mills of Alabama,* 353 U.S. 448 (1957) (union).

The companies sought to remedy the breach of their contractual rights by bringing a damage action against the employees who participated in the authorized work stoppage in violation of the contractual no-strike clause. Such an action is a logical extension of the policy that parties to collective bargaining agreements should abide by the terms of the agreement and serves to promote industrial peace through "faithful performance by the parties." See, S. Rep. No. 105 at 16. The availability of such an action would recognize that just as labor organization may be held liable for its breach of a no-strike clause, employees who engage in unauthorized, wildcat strikes would similarly be held accountable for their actions. If individual employees choose to disregard the agreement, they would do so at their own financial peril. Collective bargaining agreements should be equally binding and enforceable on all parties to the agreement.

The district court in *New York State United Teachers* v. *Thompson,* 459 F.Supp. 677 (N.D. N.Y. 1978) exercised the "judicial inventiveness" expected in *Lincoln Mills.* The Appeals Court dismissed the companies' reliance on the case because of what it viewed as several distinguishing facts. (App. A, 11a-12a) The two employees who were sued had failed to remain in their positions for the specified time receiving extended educational leave. 459 F.Supp. at 679. Since the two employees were no longer employed, the

district court noted that the "usual" remedy of discipline was not available. The district court reviewed this Court's decisions interpreting §301 and the express language of §301(b) and concluded that the issue of individual liability fell within the penumbral area of the express statutory mandates. 459 F.2d at 681-82. The district court also concluded that there was nothing "sacrosanct" in the language of §301(b) or this Court's decision in *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962) that would insulate individual employees for monetary liability under §301. 459 F.Supp. at 683. The district court noted that to allow the individual conduct to fall outside the scope of §301 would leave a gap in the uniform enforcement of the statute and concluded that the rights of an employer were not to be accorded a lesser degree of protection. 459 F.Supp. at 683-84.

Notwithstanding the Appeal Court's attempts to distinguish the district court's decision in *Thompson*, the reasoning that a collective bargaining agreement is binding on employees and that the federal courts are free to fashion appropriate remedies for breaches of the collective bargaining agreement is equally applicable in the present case. See, 3 Indus. Rel. L. Rev. at 677-78. The reasoning of the district court in *Thompson* and its exercise of "judicial inventiveness" is certainly more consistent with this Court's decisions interpreting §301 than the decision of the Appeals Court.

The Appeals Court's interpretation of this Court's decisions in *Smith* and *Hines* misconstrues the significance of those decisions as they pertain to the development of federal substantive labor law. Those decisions recognize that employees as well as the unions may sue and be sued under §301. The Appeals Court's refusal to recognize that an employer may sue its employees for individualized breaches of the collective bargaining agreement thwarts the Congressional purpose.

III. THE RECOVERY OF DAMAGES FROM INDIVIDUAL EMPLOYEES WHO PARTICIPATED IN AN UNAUTHORIZED WORK STOPPAGE IN VIOLATION OF THE NO-STRIKE CLAUSE IS NEEDED TO PRESERVE THE INTEGRITY OF THE COLLECTIVE BARGAINING AGREEMENT.

A. The Denial of a Damage Action Against the Individual Employees Leaves the Companies Without Any Monetary Remedy.

The Senate Report recognized that the chief advantage which an employer can expect from a collective bargaining agreement is the assurance of uninterrupted operation during the life of the agreement. S. Rep. No. 105 at 16; cf. *Boys Markets*, 398 U.S. at 249. The companies were signatory to a collective bargaining agreement and shared the reasonable expectation that they would enjoy uninterrupted operation not only during the life of the agreement but also during the negotiations on the amendments to the agreement. The companies' expectations were shattered by the employees' actions. There is no dispute that each company was the victim of a work stoppage. There is also no dispute that the work stoppages were unauthorized by the employees' collective bargaining representative and were in violation of the no-strike clause of the agreement.

The companies did not seek damages from the union since no basis of recovery existed given the unauthorized nature of the employees' actions. In *Carbon Fuel Co.* v. *United Mineworkers of America*, — U.S. —, 100 S. Ct. 410 (1979), this Court held that the responsibility of a union under §301 for strikes in breach of the collective bargaining agreement is limited to those situations where the union may be found responsible under the common law rules of agency. 100 S. Ct. at 413. Accordingly, a union is not liable for strikes which it did not participate in, authorize, or ratify.

The *Carbon Fuel* decision coupled with the Appeals Court's denial of relief against the individual employees

effectively precludes the companies from any remedy to recoup the financial losses that the employees caused by their actions. Such a result is clearly unwarranted under §301 since there is nothing in the language of §301 or its legislative history that indicates Congress intended to limit the type of relief available to the injured party to the collective bargaining agreement where the employees are not acting as agents of their union. The Appeals Court's decision errodes the Congressional intent as recognized by this Court in *Lincoln Mills* that parties, including employees, to such agreements should be bound by them. 353 U.S. at 453.

The companies are left in a position where they were victimized by a dispute over which they had no control; were unable to engage in normal operations because of their employees' actions; were coerced, albeit unsuccessfully, by the employees to give up additional rights under the agreement; and were left by the courts without any monetary remedy. This result is hardly what Congress had anticipated when it enacted §301.

B. The Exemption of Employees From Personal Liability Would Serve No Legitimate Purpose Under Federal Labor Policy.

The possibility that the employees may be subject to financial liability as the result of their participation in an unauthorized work stoppage in violation of the collective bargaining agreement does not constitute an acceptable reason to exempt them from the ordinary consequences of their actions. The actions of employees who violate the agreement in contravention of their union seriously undermine the viability and stability of the collective bargaining agreement.[14] It was the disruption to the collective bar-

[14] The courts have long recognized that there can be no effective bargaining or stable contractual relationships if employees are at liberty to ignore the bargaining agency and take matters into their own hands. See *National Labor Relations Board* v. *Draper Corp.*, 145 F.2d 199 (4th Cir. 1944); *Emporium Capwell Co.* v. *Western Addition Community Organization*, 420 U.S. 50 (1975).

gaining process that troubled Congress and that Congress sought to prevent. H.R. Rep. No. 245, 80th Cong., 1st Sess. 46 (1974); S. Rep. No. 105, 80th Cong. 1st Sess. 16, 17 (1947).

The no-strike obligation in the agreement is meaningless unless the employees abide by it. Although a union may authorize or ratify a work stoppage, the employees actually implement the union directive. When employees act at the request of their union, they act as agents and under §301(b) are not subject to liability. When employees act without the authorization of their union, they have undercut the stability of the collective bargaining relationship and have reduced the no-strike commitment to a hollow promise.

The district court in *DuQuoin Packing Co.* v. *P-156 Amalgamated Meat Cutters and Butcher Workers of North America*, 321 F.Supp. 1230 (E.D. Ill. 1971), denied a motion to dismiss a damage claim against individual union members. The district court succinctly stated the policy underlying the need for such actions.

> History has shown that individual union members take advantage of the provisions of a collective bargaining agreement when it is to their individual advantage. By the same token they should individually be bound by the provisions of the collective bargaining agreement which they have ratified and be liable for any breach of the provisions of a collective bargaining agreement which they individually have caused. The individual members of a union should not be permitted to strike with impunity in violation of the collective bargaining agreement when they are not requested or demanded or authorized to so strike by their union officials. 321 F.Supp. at 1233.

The effect of the damage action sought by the companies would be to insure that employees would recognize their responsibilities under the collective bargaining agreements and to deter them from unauthorized activities of the

type presented in the instant case. To that end, the damage action would promote industrial peace by promoting a higher degree of responsibility upon the employees.

C. The Existence of a Damage Action Against Individuals in the Instant Case Will Not Mark a Return to the *Danbury Hatters* Era.

The existence of damage action against employees who, in their individual capacity, breached the no-strike clause of the collective bargaining agreement will neither constitute a return to the *Danbury Hatters* era nor negate the Congressional purpose expressed in 301(b). On the contrary, the availability of damages in this precise and narrow context will actually further the Congressional purpose underlying §301 by closing a gap which exists in the uniform enforcement of collective bargaining agreements. The actions of the employees in this case cannot be equated to the actions of the employees who were found liable in the *Danbury Hatters* cases.

In *Boys Markets, Inc.* v. *Retail Clerk's Union, Local 770*, 398 U.S. 235, 251 (1971), this Court recognized a shift in emphasis form the protection of the "nascent" labor movement to the encouragement of collective bargaining. The instant case exemplifies the devastating impact that an unauthorized work stoppage in violation of the contractural relationship has upon the collective bargaining agreement and the expectations of the parties.

The concern of Congress in enacting §301(b) was to insure that individual union members would not be held liable for the actions of their union. This Court in *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 247-49 (1962) and in *Carbon Fuel Co.* v. *United Mine Workers of America*,— U.S.—, 100 S. Ct. 410, 413-14 (1979) has recognized that although union members are not liable in their individual capacity for the wrongs of their union, their union is likewise not liable for the employees' actions unless an agency relationship is established. This case does not fall within the holding of either of the two cases. The existence

of a damage action in this case against employees acting in admitted contravention of their union and in violation of their collective bargaining agreement would fill the void between *Atkinson* and *Carbon Fuel.*

Employees who benefit from the terms of a collective bargaining agreement and who can enforce that agreement in federal court should be held accountable in damages for their individual breaches of the agreement. This remedy will insure the continued integrity of the collective bargaining process by serving as a strong deterrent to recalcitrant parties who refuse to fulfill their obligations under the collective bargaining agreement.

CONCLUSION

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Sixth Circuit should be reversed with instructions to reinstate the damage claim.

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No. 79-1777

MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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COUNTER QUESTION PRESENTED

May employees be liable in their individual capacities to their employer in monetary damages for their alleged breach of the collective bargaining agreement under § 301 (a) and (b) of the Labor Management Relations Act, 29 USCA § 185 (a) and (b)?

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

NO. 79-1777

COMPLETE AUTO TRANSIT, INC., et al.,
*Petitioners,**

-VS-

DANNY REIS, et al.,
*Respondents.***

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 614 F. 2d 1110 and is reprinted at App. A, pp. 1a-13a, of the Appendix to the Petition herein. The opinions of the United States District Court for Eastern District of Michigan, Southern Division granting the Motion to Dismiss and denying the Motion for

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* Petitioners, who were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Complete Auto Transit, Inc., Automobile Carriers, Inc., and F.J. Boutell Driveaway Co., Inc.

** Respondents are present and former employees of the Petitioners who were represented by Teamsters Local 332, affiliated with the International Brotherhood of Teamsters and who were employed by Petitioners at their Flint, Michigan facilities at the time of the work stoppage. The following individuals were designated as named Defendants in the consolidated action: Danny Reis, Larry Keller, Virgil Williams, John Sealy and John Lamb (Complete Auto Transit); Delbert Addison, Michael Boudreau, Donald Sears, and Gerald Soupal (Automobile Carriers, Inc.); Joseph A. Hardacre, Carl S. Letts, Herman C. McCullough, Dennis Stockinger and Edward G. Warner, (F.J. Boutell Driveaway Co., Inc.).

Reconsideration are not reported and are reprinted respectively at App. B, pp. 15a-19a and App. C, pp. 19a-21a of the Appendix to the Petition herein.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the Court of Appeals was entered on February 8, 1980. The Petition herein was filed on May 7, 1980 and granted on October 14, 1980.

STATUTE INVOLVED

This case involves §301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. 185 which is set forth in its entirety at App. D, pp. 21a-23a of the Petition herein.

STATEMENT OF THE CASE

Federal Jurisdiction

Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc., Petitioners, brought this action pursuant to §301 of the Labor Management Act (29 USC §185) against named and unnamed employees for injunctive and monetary relief as a result of the employees' withholding of their employment services. The cases were consolidated for the hearing on the Employers' request for injunctive relief.

STATEMENT OF FACTS

The employers are engaged in the transportation by truck of newly manufactured motor vehicles. (App. A, 2a)[1] All are signatory to an identical collective bargaining agreement entitled the National Master Automobile Transpor-

[1] Note: References to the appendices to the Petition herein are designated "App., a". References to the Joint Appendix are designated "J.A.".

ters Agreement and Central and Southern Conference Areas Supplemental Agreements which cover their operations, including their Flint, Michigan facilities. (J.A. 14, ¶5; 16, ¶10; 24, ¶10; App. A, 2a)[2]

The employees are drivers and other individuals employed at the employers' Flint, Michigan facilities who are members of Teamsters Local 332. (J.A. 14, ¶4; 22-23, ¶4) Teamsters Local 332 is affiliated with the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America. Teamsters Local 332 is a signatory to the collective bargaining agreement with the companies and Local 332 and International Union are the exclusive bargaining agency for the employees. (J.A. 14, ¶3; 15, ¶7; 15, ¶8; 22, ¶3; App. A, 2a)

On June 8, 1976, the employees of Complete Auto Transit ceased working. (App. A, 2a; Tr. 120)[3] On June 10, the employees of the other two companies engaged in a similar cessation from work. (App. A, 2a; Tr. 121)

The companies filed the instant actions, which were subsequently consolidated, pursuant to 29 U.S.C. §185(a) requesting injunctive relief and damages from the employees. The companies alleged that the work stoppages were in violation of the collective bargaining agreement and were not authorized by the local union.[4]

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[2] The collective bargaining agreement is found in the record as Exhibit A attached to the Complaint of Complete Auto Transit, Inc.

[3] References to the transcript of the June 14, 1976 hearing on the request for injunctive relief are designated "Tr. ". The transcript is found in the record.

[4] The allegations pertaining to the unauthorized nature of the work stoppage and to the request for damages read as follows:

> 15. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants herein without the aid and assistance or authorization of the Union; and the unlawful refusal of Defendants to perform work constitutes an unauthorized or wildcat strike.
>
> 16. The Defendants, by their participation in the unlawful work stoppage, are personally liable to Plaintiff for any and all damages arising out of the work stoppage, including, but not limited to, lost profits, overhead, and attorney fees. (J.A. 8)

On June 14, 1976, the District Court, after a hearing, denied the companies' request for injunctive relief. The District Court found that the underlying dispute was between the union and its members and therefore not arbitrable under the agreement. (App. A, 2a) The District Court also found that the strikes had not been authorized by the International Union. (App. A, 2a)

On June 16, 1976, the companies filed amended complaints, renewing their request for injunctive relief. (J.A. 13 et seq.) After a hearing on the motions on June 21, 1976, the District Court found that the dispute between the union and its members had been resolved and that the only remaining issue pertained to the employees' demand for amnesty from the companies which is arbitrable under the collective bargaining agreement. The District Court concluded that the work stoppages violated the no-strike clause and that the requirements for injunctive relief were present. (App. A, 3a)

The Proceedings Below

1. The District Court

In March of 1977, the employees moved for the dismissal of the consolidated actions. (J.A. 31)[5] The motion asserted that the request for damages did not state a valid claim for relief. The District Court granted the motion and held that the employees could not be sued for money damages in their individual capacities since such relief would frustrate the Congressional purpose behind §301 of shielding union members from individual liability. (App. B, 16a, 17a)

The companies moved for the reconsideration of the dismissal of the action. The District Court denied the motion. (J.A. 35) The District Court found the reasoning in *Sinclair Oil Corp.* v *Oil, Chemical, & Atomic Workers Int'l.*

[5] The motion also sought to have the injunctions disolved. Since the only issue raised herein is the dismissal of the damage action, discussions of the lower courts' treatment of the injunction issue has been omitted.

Union, 452 F.2d 49 (7th Cir. 1971) to be in harmony with the intent of Congress in passing §301 and rejected the companies' contention that the Appeals Court in *Sinclair* had improperly construed the legislative history. (App. C, 20a)

2. The Appeals Court

Upon appeal, the Court of Appeals for the Sixth Circuit affirmed the dismissal of the damage action. The Appeals Court discussed the Seventh Circuit's decision in *Sinclair Oil*, supra, and agreed with that court's interpretation of the legislative history of Section 301. (App. A, 10a, 13a) The Seventh Circuit had concluded that Congress did not intend to create a cause of action under §301 for damages against individual union members for breach of the no-strike agreement because of the concern and desire to avoid a repetition of the Danbury Hatters cases.[6] The Appeals Court rejected the contention that this Court's statements in *Smith* v *Evening News Association*, 371 U.S. 195 (1962) and *Hines* v *Anchor Motors Freight, Inc.*, 424 U.S. 554 (1976) involving individual employee actions arising out of the contract violations by employers supported the existence of a damage action against individual employees. (App. A, 13a)

SUMMARY OF ARGUMENT

The Labor Management Relations Act of 1947 was enacted in the main to redress the imbalance existing prior to the enactment of the 1947 Act. Congress accomplished this by creation of Union Unfair Labor Practices that made unions responsible for their violation.

It was with this same thought in mind that Congress enacted §301; Congress provided the parties to the collective bargaining agreement with a forum, the Federal courts,

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[6] See Loewe v Lawlor, 208 U.S. 274 (1908); Lawlor v Loewe, 235 U.S. 522 (1915), and Loewe v Savings Bank of Danbury, 236 F. 444 (2d Cir. 1916), aff'd 242 U.S. 357 (1917).

to sue for breaches of the collective bargaining agreement. It is clear the main purpose of the enactment of the Labor Management Relations Act of 1947 by Congress was to make unions more accountable for their actions; §301 played a role in Congress' design to assure accountability. §301 provided a Federal court forum for employers, unions and employees to sue for breaches of rights afforded them under the contract. The industrial peace Congress was attempting to insure was to make certain unions were more accountable for their actions and not that the employees be made more accountable for their actions.

Congress was aware of wildcat strikes by employees but did not redress this issue in passage of §301 of the Labor Management Relations Act; §301 does not allow employees to be sued individually by their employer for money damages for their breaches of the collective bargaining agreement. An examination of the legislative history reveals that contrary is true. The following threads are seen throughout the Congressional discussion of what became §301. There was Congressional concern over the specter of the Danbury Hatters decisions and what it caused and how it effected those employees. The Congressional passed and Presidentially vetoed H.R. 4908 (1946) (Case bill)[7] with its Section 10 provisions including treatment of employees who breach collective bargaining agreements; and Congressional acknowledgement that §301 of the Labor Management Relations Act of 1947 was to be similar to §10 of H.R. 4908. Congressional discussion acknowledging employees could be disciplined by their employer up to and including discharge and be disciplined by their union by being fined for participating in an unauthorized strike and refusing the urging of their union to return to work.

The Appeals Court's construction of the legislative history was correct in concluding it did not support holding individual employees liable for money damages for breaches of collective bargaining agreements by their participating in

[7] H.R. 4908, 79th Cong., 2d Sess. (1946) vetoed in 1946

unauthorized work stoppages. The Appeals Court correctly concluded Congress did not intend to provide the employer with a money damage remedy for breaches of the terms of the contract, and the Court of Appeals correctly concluded the employer's remedy of disciplining up to and including discharge of employees was not only an adequate remedy but the only remedy afforded the employer by §301 for employees breaches of contracts by their participation in an unauthorized work stoppage. The Appeals Court correctly rejected the employer's mutuality of remedy argument as the basis for finding individual employee liability in money damages for their breach of the collective bargaining agreement.

The Appeals Court's decision is consistent with decisions of this Court involving the construction and interpretation of §301; the Appeals Court's decision did correctly apply and interpret this Court's §301 decisions. The Appeals Court correctly relied upon the Seventh Circuit's *Sinclair Oil* decision and its analysis of §301. The Appeals Court correctly resolved the issue and in so doing did properly reconcile the policy of the statute with the problems presented. Having properly ascertained the legislative intent in enacting §301, the Appeals Court correctly concluded a money damage remedy was not available to the employer against its employees although the issue presented does lie in the penumbra of the expressed statutory mandates.

The Appeals Court's decision does not relegate the employer's §301 rights to a lesser degree of protection than that afforded employees. It is true the employer's rights under §301 may be different than those of its employees, but it is equally true in the industrial setting the employer's prerogatives are broader and more inclusive than its employees. The employer and employees are not of equal stature nor on equal footing in the industrial sector; Congress in enacting §301 has both acknowledged and taken cognizance of this fact. The Appeals Court's decision has

not created a gap in the uniform enforcement of collective bargaining agreements. For whatever may be said, an employer has the prerogative of disciplining an employee up to and including discharge for breaches of the collective bargaining agreement; while on the other hand, the employee has no such option for an employer's breach of the contract.

Industrial peace will not be diminished one iota by this Court's decision affirming the Appeals Court on this issue. The contrary would be true if employers were able to sue their employees for money damages for their breaches of the collective bargaining agreement. Money judgments obtained by an employer against his employees then would be collected by garnishment and attachment actions, neither of which would do anything to further industrial peace that employers profess they are seeking.

ARGUMENT

I. THE APPEALS COURT'S DECISION CORRECTLY INTERPRETED THE LEGISLATIVE HISTORY OF §301.

In affirming the District Court's dismissal of a damage action against the employees, the Appeals Court concluded that the legislative history of §301 indicates that Congress did not intend to create a cause of action for damages against individual union members. (App. A, 13a) The Appeals Court's analysis and conclusion of the legislative history accurately assesses Congressional concern about the issue of individual liability. Congressional concern was to insulate employees from individual liability; the identifying and solidifying phrase on this issue was the Danbury Hatters cases. See, e.g. 93 Cong. Rec. 6283 (1947) (Rep. Case). However, there was other instances of this concern: The passage by Congress of H.R. 4908 (Case bill) that was vetoed by the President. §10(d) of H.R. 4908 is another example of the protective concern of Congress and its intention to

exempt employees from being individually responsible in money damages to their employers for breaches of the collective bargaining agreement. Likewise, the Congressional colloquy between Sen. Taft and Sen. Caphart on the subject of handling of employee unauthorized work stoppages and breach of the collective bargaining agreement. 92 Cong. Rec. 5706 (1946). These are clear examples of Congressional concern to insulate the individual employees from monetary liability for their breaches of the collective bargaining agreement occasioned by their participation in an unauthorized work stoppage.

The Appeals Court's analysis of the legislative history was accurate and correct; the Appeals Court correctly relied upon the Seventh Circuit's decision in *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union*, 452 F.2d 49 (7th. Cir. 1971) The Seventh Circuit's analysis of the legislative history surrounding the enactment of §301 was thorough and complete; it considered the entire legislative history of §301 and not solely the Danbury Hatters decisions. The Appeals Court realized the factual differences between the Danbury Hatters cases and the factual situation involving individual employee breaches of the collective bargaining agreement; however, the Appeals Court correctly concluded the legislative history supported the Congressional concern of avoiding the consequences experienced by the members of Danbury Hatters and that they did not want it to occur again as the result of enacting §301. Other courts faced with this issue have reached the same results.[8]

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[8] For cases prohibiting actions against individual employees, see e.g. *Westinghouse Electric Corp.* v *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979); *Benada Aluminum Products Co.* v *United Steel Workers*, 83 Lab. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); *United States Steel Corp.* v *UMW, Local 8003*, 83 Lab. Cas. (CCH) Par. 10, 612 (D. Utah 1978); *Lakeshore Motor Freight* v *Steel Haulers Local 800, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, ___ F. Supp.___; 104 LRRM 2153 (W.D. Pa. 1980) *United Steelworkers of America* v *Lorraine, a Division of Koehring Co.*, ___ F. 2d___, 103 LRRM 2627 (6th Cir. 1980); *Putnam Fabricating Co.* v *Null*,_____ F. 2d _____, 105 LRRM 2645 (4th Cir. 1980).

It is clear Congressional concern manifested in §301(b) and (e) was intended to extend to include, cover and exempt from money damages breaches of collective bargaining agreements by individual employees, including their participation in unauthorized work stoppages.

An examination of the legislative history is required as the expressed language of the statute does not specifically address itself to the issue presented. The Appeals Court's analysis of the legislative history was correct; the Appeals Court properly characterized and framed the issue. (App. A, 9a, 10a) The Appeals Court's decision placed Congressional concern over the Danbury Hatters cases in its proper perspective; the Appeals Court realized and considered the factual differences between the Danbury Hatters cases and the instant factual situation.

A. The Congressional Purpose Behind the Enactment of §301 Was to Make Unions Accountable and Make Collective Bargaining Agreements Binding and Enforceable Between the Parties.

Congressional passage and enactment of the Taft-Hartley Act and the passage by Congress but vetoed by the President of H.R. 4908, 79th Cong., 2d Sess. (1946) demonstrated several interrelated concerns on the part of Congress. First and foremost, Congress wanted to make unions more accountable for their action and to redress the imbalances created by the National Labor Relations Act.[9] To that end Congress made unions responsible for violations of unfair labor practices that were enacted as part of the Labor Management Relations Act. Also, Congress enacted §301 to assure the enforcement of collective bargaining agreements by the parties. An examination of §301 and its subsections (a) through (e) reveals Congress was intending to make it easier to hold unions accountable for their actions; each of the subsections of §301 addresses itself to facilitating a cause of action against the union for breach of a collective bargaining agreement.

[9] July 5, 1935 C. 372 1 et. seq., 49 Stat. 449 et. seq.

An analysis of the legislative history of the provisions authorizing suits in Federal court contained in the report from the Committee on Education and Labor revealed a concern of the committee that labor organizations be held responsible for contract violations was clearly expressed. H.R. Rep. No. 245, 80th Cong., 1st Sess. (1947). The report stated:

> When labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens. Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other party must assume his. H.R. Rep. No. 245 at 46

The Senate also expressed its concern over the enforceability of collective bargaining agreements. S. Rep. No. 105, 80th Cong., 1st Sess. at 15 (1947). The report from the Committee on Labor and Public Welfare stated that the Senate's proposal would make agreements equally enforceable on both parties. The report stated:

> If unions can break agreements with relative inpunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.
>
> Consequently, to encourage the making of agreements and to promote industrial peace through

> faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce. S. Rep. No. 105 at 16.

A major Congressional concern was over the fact it would be extremely difficult to make unions accountable and responsible for adhering to their obligations under the collective bargaining agreement, until unions were recognized as legal entities throughout the entire country thus enabling litigation against the unions to be easily effectuated. Congress recognized this prcblem and its enactment of §301 and its subsections was its response to the problem. The debate in the Senate over §301 revealed one of the primary purposes of §301 was to overcome the procedural difficulties that existed in some states when an employer attempted to sue a union. 93 Cong. Rec. 3839 (1947) (Senator Taft); 93 Cong. Rec. 5014 (1947) (Senator Ball). The debate also revealed the overriding concern that existed in Congress that collective bargaining agreements must be enforceable and binding upon the union. 93 Cong. Rec. 3839 (1947) (Senator Taft). Senator Taft stated:

> What is the purpose of Title III? The purpose of Title III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective bargaining agreement—exactly the same subject matter which is contained in Titles I and II. 93 Cong. Rec. 4141 (1947)

The Senate Report reflected the same concern over the enforceability of collective bargaining agreements. The Senate report recognized the problem would not be corrected until labor organizations were recognized as legal entities and until that was accomplished the mutual responsibility

necessary to make collective bargaining agreements meaningful would be missing. The Senate Report stated:

> Statutory recognition of the collective bargaining agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace. S. Rep. No. 105 at 17.

The legislative history of §301 reveals through the reports and debates of the House and Senate that the underlying purpose of §301 and its subsections was to make the union a legal entity so that it could sue and be sued. Thereby, the parties to the collective bargaining agreement, the employer, union and its members were assured they could sue for breaches of the terms of the collective bargaining agreement and provide the parties access to Federal courts to enforce the collective bargaining agreement. This would insure the collective bargaining agreements would remain a potent institution in the framework of national labor policy and at the same time assist in the promotion of industrial peace. The Senate Report indicates the importance of making the union a legal entity in assuring the sanctity of the collective bargaining agreement:

> It is apparent that until all jurisdictions, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective bargaining agreements. The Congress has protected the rights of workers to organize, it has passed laws to encourage and promote collective bargaining. Sen. Rep. No. 105 at 17.

B. The Appeals Court Correctly Construed Congressional Concern Over Individual Liability and Afforded It Proper Significance.

In rejecting the argument that a damage action could be brought against individual employees, the Appeals Court

relied upon the Seventh Circuit's decision in *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* 452 F. 2d 49 (7th Cir. 1971). The Seventh Circuit, in reaching its decision in *Sinclair* did not rely solely on the legislative history relating to Congressional discussion of the specter of the Danbury Hatters cases and its effect on the Danbury Hatters members in its debates over §301 when the Seventh Circuit concluded individual employees cannot be sued for money damages by their employer for breaches of the collective bargaining agreement including their participation in an unauthorized work stoppage. In rejecting the notion of individual employee monetary liability, the Seventh Circuit's review and analysis of the legislative history surrounding the enactment of §301 led to their determination that the legislative history of §301 did not support such an employer's cause of action against its employees.

In reviewing the legislative history to see what alternative remedies are available to be used against employee breaches of the collective bargaining agreement, including unauthorized work stoppage, the Seventh Circuit in *Sinclair Oil,* 452 F. 2d 49 at 53, discusses the debate in the Senate on §301 and a statement made by Senator Taft:

> If there is a collective bargaining agreement and the men are bound by it, they ought to carry it out. If the union wants to carry it out and some of the men say, "We will not do it", they ought to be liable. 92 Cong. Rec. 5706 (1946).

The context of this discussion between Senator Taft and Senator Capehart clearly demonstrates the liability referred to is the union's ability to fine its members for refusing to obey the union's order to return to work from an unauthorized work stoppage that the employee-members were participating.[10]

[10]Mr. Capehart. I believe I am correct in the statement that many miner's contracts an agreement is contained that if any member of the union pulls a wild-cat strike or a sit-down strike, or refuses to work, he is

(Continued on page 15)

Additionally, the Seventh Circuit relied on the legislative history of H.R. 4908, 79th Cong., 2d Sess. (1946) particularly with Section 10 passed by both houses of Congress but vetoed by the President. In its final form as recorded and passed by the House and the Senate, Section 10 included subsection (d) that provided employees who participated in unauthorized work stoppages would lose their status as employees under the National Labor Relations Act.[11]

Footnote 10 (Continued from page 14)

automatically fined by the union, and I think the fine has been as high as $6.00 a day. I think it will be found today that such provisions are contained in miner's contracts, by which they try to discipline their own members by fining them $2.00, or $4.00, or $6.00 a day if they refuse to work according to the terms of the collective bargaining contract.

Mr. Taft. Yes, I think so. Generally, this particular provision has been approved by the labor people. They feel, and I feel that a responsible labor leader who wants to keep his contract should not be hampered by the fact that members of the union whom he cannot control put on a wildcat strike. Four or five men can tie up an entire plant—and it has happened repeatedly—if they happen to be in a crucial spot. Those are the men who ought to be disciplined as they prevent a responsible labor leader from carrying out his collective bargaining contract. 92 Cong. Rec. 5706 (1946).

[11] The bill, as reported and passed by both houses.

Sec. 10.(a) Suits for violation of a contract concluded as the result of collective bargaining between an employer and a labor organization if such contract affects commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: Provided. That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of this section, district court shall be deemed to have jurisdiction of the labor organization (1) in the district in which such organization maintains its principal office, or, (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interest of employee mem-

(Continued on page 16)

It is clear from Section 10 (d) of H.R. 4908, 79th Cong., 2nd Sess. (1946) that Congress contemplated employees would lose their status as employees as the sole basis for handling employee breaches of the collective bargaining agreement, including such a breach as participating in an unauthorized work stoppage.

There is legislative history supporting the argument that Congressional purpose evidenced by the language of Section 10 (d) of H.R. 4908, 79th Cong., 2d Sess. (1946) has been carried out in the spirit of the language of §301. Senator Hatch compared the various provisions of H.R. 4908, 79th Cong., 2d Sess. (1946) with those of Senator Taft's bill S. 1126 and determined the provisions of §10 of H.R. 4908, 79th Cong., 2d Sess. were substantially similar to §301 of the Senator Taft bill. S. 1126. 93 Cong. Rec. 5010 (1947). It was S. 1126 that was enacted and became the Labor Management Relations Act of 1947. Likewise, this Court has stated previously:

> The direct antecedent of §301 was §10 of the Case bill H.R. 4908, 79th Cong., 2d Sess., which was passed by both Houses of the Congress, but vetoed by the President in 1946. In conferring upon the federal district court's jurisdiction over suits upon contracts made by labor organizations, that section of the Case bill contained provisions substantially the same as §301. *Charles Dowd Box Co., Inc.* v *Courtney*, 368 U.S. 502 at 509 (1962).

(Footnote 11) Continued from page 15)

bers. The service of summons, and subpoena, or other legal process upon such officer or agent shall constitute service upon the labor organization.

(d) Any employee who participates in a strike or other interference with the performance of an existing collective bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights with such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of Sections 8, 9 and 10 of the National Labor Relations Act: Provided. That such loss of status for such employee shall cease if and when he is re-employed by such employer.

In *Sinclair Oil* 452 F. 2d 49 at 52 the Seventh Circuit did consider the specter of the Danbury Hatters cases as set forth in its analysis of the legislative history surrounding the enactment of §301. Reference was made to Senator Taft's remark relating to the Danbury Hatters cases. We do not want to perpetuate such a condition. 92 Cong. Rec. 5705 (1946) Senator Taft was expressing Congressional concern of its desire to avoid subjecting individual union members to fiscal ruin that the employees involved in a Danbury Hatters case experienced as the result of those decisions.

There is no question Congress was concerned with the specter of the Danbury Hatters cases being revisited upon the employees and so was the Seventh Circuit in *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* 452 F. 2d 49 (7th Cir. 1971). However, the *Sinclair Oil* decision is well supported by the legislative history surrounding §301 including the Congressional concern of avoiding a recurrence of what happened to the Danbury Hatters members.

The Appeals Court did correctly construe the legislative history and afforded the legislative history its rightful significance as it related to the issue of individual employee liability in monetary damages to their employer for their breach of the collective bargaining agreements, including participation in unauthorized work stoppages. The Appeals Court correctly relied upon the *Sinclair Oil* decision and the Seventh Circuit's analysis of the legislative history of §301. (App. A, 13a)

C. The Appeals Court's Conclusion That the Only Remedy Available to an Employer Confronted With an Unauthorized Work Stoppage in Violation of the Collective Bargaining Agreement Is Discharge or Disciplinary Action Is Supported in the Legislative History of §301.

While acknowledging the main purpose behind the Taft-Hartley Act was the promotion of industrial peace, the

Appeals Court correctly analyzed the legislative history of §301 by concluding the thrust of §301 was to make unions accountable for their actions in breach of the collective bargaining agreement and that it was not the intention of §301 to make individual employees liable in money damages for breaches of the collective bargaining agreement, including their participation in an unauthorized work stoppage. That is not to say the employer is without recourse and remedy in such situations or that they must sit idly by. Employee participation in unauthorized work stoppage in derogation of the terms of the collective bargaining agreement exposes the individual employees to discharge or subject to disciplinary action. The Appeals Court correctly concluded that this was the sole type of remedy available to an employer under §301 when confronted with a situation of their employees participating in an unauthorized work stoppage. (App. A, 10a) In arriving at this conclusion, the Appeals Court adopted the analysis and conclusion of the Seventh Circuit in *Sinclair* and its interpretation of the legislative history of §301. (App. A, 10a) The Appeals Court concluded the legislative history of §301 did not provide a parallel purpose of making individual employees financially liable in money damages to their employer for breaches of the collective bargaining agreement by their participation in unauthorized work stoppages. (App. A, 10a) In arriving at this conclusion, the Appeals Court adopted the Seventh Circuit's persuasive analysis and conclusions with respect to the legislative history of §301 contained in *Sinclair*. (App. A, 10a)

As *Sinclair Oil* indicates, an employer's disciplining of its employees up to and including discharge for their participation in an unauthorized work stoppage is not the only disciplinary punishment such employees may be subjected. The union may certainly discipline their members by fining them for refusing to abide by the union's request to return to work from an unauthorized work stoppage. The legislative history surrounding §301 recognizes this as another method of limiting the occurrence of employee participation

in unauthorized work stoppages. *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* F. 2d 49 (7th Cir. 1971)

The Seventh Circuit's analysis of Congressional concerns that led to the enactment of §301 is dispositive of the issue of can individual members be held financially responsible in money damages to their employer for breaches of the collective bargaining agreement by their participation in unauthorized work stoppages. §301 as enacted focused on union actions and conduct in breach of the collective bargaining agreement and making unions accountable and responsible for these actions and conduct. This is clear upon reviewing each of the subsections of §301. By reviewing the legislative history of §301 and §301 as enacted, it is clear the intention of Congress was to accomplish industrial peace through making unions accountable for their actions and breaches of their collective bargaining agreement. Likewise, it is clear §301 did not focus individual employees' action or conduct in breach of the collective bargaining agreement. Certainly Congress was aware of the occurrence of wildcat strikes; the colloquy between Senators Taft and Capehart attest to Congressional awareness.[12] Therefore, it can be concluded that Congress did not believe employee participation in unauthorized work stoppages was any real threat to the industrial peace that §301 was endeavoring to accomplish or that adequate methods already existed to accomplish the same purpose of achieving industrial peace.

An examination of the legislative history surrounding the passage and enactment of the Taft-Hartley bill and the passage by the House and Senate but vetoed by the President of the Case bill H.R. 4908, 79th Cong., 2d Sess. (1946) reveals Congress concluded there already existed sufficient recourse to adequately handle employee participation in unauthorized work stoppages in derogation of the terms of the collective bargaining agreement.

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[12] Text at footnote 10, supra.

The legislative history does support the Seventh Circuit's decision in *Sinclair* that individual employees could not be sued under §301 in money damages by their employer for breaches of the collective bargaining agreement due to their participation in unauthorized work stoppages. The legislative history surrounding the Case bill including the legislation passed by Congress contained a provision, §10 that corresponds to §301.[13] §10 (d) of the H.R. 4908 provided employees would lose their status as employees under the Act for their participation in unauthorized work stoppages in breach of the collective bargaining agreement; therefore, the employer would be free to discipline an employee up to and including discharge without fear or concern that the discipline would be in violation of the employee's rights under the Act. It is clear from §10(d) of H.R. 4908 that Congress had contemplated loss of employee status under the Act as the sole basis for handling employee breaches of the collective bargaining agreement due to their participating in unauthorized work stoppages.

Also, there is legislative history as well as this Court's concurrence supporting the position that the Congressional purpose evidenced by the language of §10 of the Case bill has been carried through in the spirit of the language of §301. Senator Hatch's comparison of the two bills. S. 1126 (Senator Taft's bill) with H.R. 4908 (Rep. Case bill); Senator Hatch concluded §10 of H.R. 4908 was substantially similar to 301 of S. 1126. Cong. Rec. 5010 (1947). It was S. 1126 80th Cong. 1st Sess. (1947) that was enacted and became the Taft-Hartley Act. Likewise, this Court concluded in *Charles Dowd Box Co., Inc.*, v *Courtney*, 368 U.S. 502 at 509 (1962) that the provisions of §10 of H.R. 4908 were and contained provisions substantially similar to those of §301.

There is legislative history surrounding the enactment of the Taft-Hartley Act and its direct antecedent H.R. 4908 that supports the conclusion Congress was cognizant of

[13] Text a Footnote 11, supra.

alternative remedies that were available to handle employee breaches of the collective bargaining agreement. Congress recognized that unions could discipline their members by fining them if the employees ignored the union's request to return to work from an unauthorized work stoppaged; the colloquy between Senators Capehart and Taft certainly supports this conclusion.[14]

The Seventh Circuit's analysis of the legislative history of §301 in *Sinclair Oil* does certainly support its conclusion.

> Congress was well aware of the problem involved in reaching and enforcing no-strike agreements, and we think that when Section 301 was enacted it had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages. We conclude that the primary remedy of *Sinclair* is discharge or discipline of individual defendants. Of course, the union has the right to discipline its disobedient members. 452 F. 2d 49 at 54 (Citations and footnote omitted).

The Appeals Court's reliance and adopting of the Seventh Circuit's decision in *Sinclair Oil* on this question of individual employee liability is correct and supported by the legislative history and the Congressional purpose in enacting §301.

II. THE AVAILABILITY OF A MONEY DAMAGE REMEDY AGAINST INDIVIDUALS PARTICIPATING IN AN UNAUTHORIZED WORK STOPPAGE IS NOT SUPPORTED BY THIS COURT'S DECISIONS INTERPRETING §301.

The Appeals Court correctly concluded in its review of this Court's decision in *Smith* v *Evening News Ass'n*, 371 U.S. 195 (1962) and *Hines* v *Anchor Motor Freight*, 424 U.S. 554 (1976) that neither case is authority for holding

[14] Text at Footnote 10, supra.

that Congress intended to create a cause of action for damages against individual employees. (App. A, 12a-13a) In so holding, the Appeals Court correctly perceived the import and gave the proper weight to each of these cases. In *Smith* v *Evening News*, the issue before the court was one of jurisdiction, not the separate question did §301 create a cause of action; in arriving at this conclusion the Appeals Court cites this Court's decision in *Bell* v *Hood*, 327 U.S. 678 (1946). The Appeals Court goes on to state the holding of this Court in *Smith* v *Evening News* was that §301 is not to be given a narrow interpretation and that it entitles an employee to sue his employer in money damages for breaches of a collective bargaining agreement. (App. A, 12a) The Appeals Court concluded this Court's decision in *Hines* involved the issue, could employees maintain an action against their employer for breach of a collective bargaining contract when the employees' accompanying complaint against their union for breach of its duty of fair representation had withstood a motion for summary judgment. (App. A, 13a) This Court, in holding it was error to dismiss the employees' action against the employer stated: "Section 301 contemplates suits by and against individual employees as well as between unions and employers." *Hines* v *Anchor Motor Freight*, 424, U.S. 554 at 562 (App. A, 13a) The Appeals Court correctly concluded:

> Neither of these statements by the Supreme Court in cases involving individual acts of alleged contract violations by employers is authority for holding that it was the intention of Congress in enacting §301 to create a cause of action for damages against individual union members for breach of a no-strike agreement. (App. A, 13a).

The Appeals Court has not misconstrued the significance of these decisions as well as the intent and meaning of *Textile Workers Union of America* v *Lincoln Mills of Alabama*, 353 U.S. 448 (1957). The Appeals Court's decision is consistent with this Court's holding in *Lincoln Mills*,

that the substantive law to apply in suits under §301 is federal law which the courts must fashion from the policy of the National Labor Laws. 353 U.S. 448 at 456. In *Lincoln Mills*, this Court points out the purpose of §301 was to provide the necessary legal remedies for breaches of the collective bargaining agreement. This Court then quotes a colloquy between Rep. Hartley and Rep. Barden over the purpose of §302 of the House bill.[15] This Court points out that §302 of H.R. 3020 80th Cong., 1st Sess. (1947) was substantially the equivalent of the present §301. The context of this Court's holding in *Lincoln Mills*, was made to insure the employer would abide by his contractual promises to arbitrate grievance disputes. This Court has long recognized the importance of the role played by voluntary agreed upon arbitration of disputes between the parties to a collective bargaining agreement in insuring industrial peace and stability. *United Steelworkers of America* v *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v *Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

Although the issue before the Appeals Court does lie in the penumbra of the expressed statutory mandates set forth in §301, the Appeals Court did correctly look to the policy of the legislation and the legislative history surrounding the

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[15] "Mr. Barden. Mr. Chairman, I take this time for the purpose of asking the Chairman a question and in asking the question I want it understood that it is intended to make it a part of the record that may hereafter be referred to as history of the Legislation."

"It is my understanding that section 302, the section dealing with equal responsibility under collective bargaining contracts and strike actions and proceedings in district court contemplates not only the ordinary law suits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in other words, proceedings could for example be brought by the employers, the labor organizations or interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract."

"Mr. Hartley. The interpretation the gentleman has just given of that section is absolutely correct." 93 Cong. Rec. 3656-3657 (1947).

enactment of the legislation and concluded §301 does not entitle the employer to sue individual employees in monetary damages for their participation in an unathorized work stoppage in derogation of the terms of the collective bargaining agreement. As this Court stated in *Lincoln Mills*, the range of 'judicial inventiveness' in fashioning a §301 remedy will be determined by the nature of the problem. 353 U.S. 448 at 457.

In *Atkinson* v *Sinclair Refining Co.*, 370 U.S. 238 (1962) this Court did not decide the issue of individual liability because the individual defendants were alleged to be agents of the union. 370 U.S. 238 at 249 n. 7. However, in *Boys Markets* v *Retail Clerks Union Local 770*, 398 U.S. 235 (1970), this Court pointed out an award of damages is not an effective remedy for an employer faced with an illegal strike and would only tend to aggrevate industrial strife and delay an early resolution of the difficulties between an employer and union. 398 U.S. 235 at 248.

In *Charles Dowd Box* v *Courtney*, 368 U.S. 502 at 509 (1962), this Court concluded 301 was substantially similar to its direct antecedent §10 of H.R. 4908, 79th Cong., 2d Sess. (1946) in conferring upon the federal district court's jurisdiction over suits involving breaches of the collective bargaining agreement. §10 (d) of H.R. 4908 provided that employees participating in unauthorized work stoppages in breach of the collective bargaining agreement would lose their status as employees under the Act.

The Seventh Circuit in *Sinclair* pointed out neither Congress nor this Court has been persuaded by the argument advanced by the employer in *Sinclair* that recovery of damages against wildcat strikers would serve the national labor policy of encouraging peaceful settlement of labor disputes. The Seventh Circuit relied on what this Court stated in *Boys Markets*, 452 F. 2d 49 at 54. The Seventh Circuit rejected the employer's argument for money damages against its employees for participating in an unau-

thorized work stoppage. The Seventh Circuit went on to conclude that:

> Congress was well aware of the problems involved in reaching and enforcing no-strike agreements and we think that when Section 301 was enacted it had no intention of subjecting union members engaged in wildcat strikes to individual liability for damages. We conclude that the primary remedy of *Sinclair* is discharge or discipline of individual defendants. Of course the union has the right to discipline its disobedient members. *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l. Union*, 452 F. 2d 49 at 54 (7th Cir. 1971) (Citations and footnotes omitted.)

The Appeals Court correctly refused to adopt those cases petitioner argued had exhibited the, "judicial inventiveness" this Court spoke about in *Lincoln Mills*, 353 U.S. 448 at 457. The Petitioner relied upon *New York State United Teachers* v *Thompson*, 459 F. Supp. 677 (N.D. N.Y. 1978); *Alloy Cast Steel Corp.* v *United Steel Workers*, 429 F. Supp. 445 (N.D. Ohio 1977); *Maita* v *Killeen*, 465 F. Supp. 471 (E.D. Pa. 1979). In rejecting the Petitioner's argument for, "judicial inventiveness", the Appeals Court distinguished *New York Teachers* v *Thompson*, by concluding that case did not involve a no-strike agreement, the employees sued had not acted collectively, and as the employees had previously resigned, the remedy of discipline or discharge was non-existent. The Appeals Court concluded the *Thompson* case was distinguishable on numerous grounds. (App. A, 12a) the Appeals Court in rejecting Petitioner's argument to adopt the conclusion reached by the Federal court in *Alloy and Maita* cases concluded the Federal court's reliance upon the cited cases,[16] stated from these two opinions of this Court do not compel the conclusion reached by the Federal courts in *Alloy and Maita*. (App. A, 12a)

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[16] *Smith* v *Evening News Ass'n.*, 371 U.S. 195 (1962); *Hines* v *Anchor Motor Freight*, 424 U.S. 554 (1976)

The Appeals Court exercised the proper, "judicial inventiveness" in deciding §301 did not provide an employer with a money damage remedy for individual employee breaches of the collective bargaining agreement due to their participating in unauthorized work stoppages. (App. A, 13a) In rejecting Petitioner's argument and concluding the only remedy afforded an employer under §301 for such employee breaches of the collective bargaining agreement is discharge or discipline of the employee, the Appeals Court did exercise the correct, "judicial inventiveness", this Court has urged Federal courts to use in §301 actions. As this Court has held, employers faced with their employees participating in unauthorized work stoppages are able to obtain injunctive relief of alleged employee contractual breaches *Boys Markets, Inc.* v *Retail Clerks Union Local 770,* 398 U.S. 235 at 254 (1970), and the employer is able to exercise the self help remedy of discharge if their employees' action is unprotected. *Emporium Capwell Co.* v *Western Addition Community Organization,* 420 U.S. 50 at 72 (1975); *Atkinson* v *Sinclair Refining Company,* 370 U.S. 238 at 246 (1962).

The Appeals Court in adopting the analysis and conclusion of the Seventh Circuit decision in *Sinclair Oil* concluded the Seventh Circuit exercised the appropriate, "judicial inventiveness" required in interpreting §301 policy and legislative history. Likewise, there are several other decisions by Federal courts that have reached the same determination on this issue,[17] and each of these courts have

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[17] See e.g. *Westinghouse Electric Corp.* v *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979); *Benada Aluminum Products Co.* v *United Steel Workers*, 83 LAB. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); *United States Steel Corp.* v *UMW, Local 8003*, 83 LAB. Cas. (CCH) Par. 10, 612 (D. Utah 1978); *Lakeshore Motor Freight* v *Steel Haulers Local 800, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*,____F. Supp.____; 104 LRRM 2153 (W.D. Pa. 1980); *United Steelworkers of America* v *Lorraine, A Division of Koehring Co.*,____F. 2d____, 103 LRRM 2627 (6th Cir. 1980); *Putnam Fabricating Co.* v *Null*,____F. 2d____105 LRRM 2645 (4th Cir. 1980)

exercised the appropriate, "judicial inventiveness" urged by this Court in *Lincoln Mills*.

The Appeals Court correctly interpreted and construed this Court's decisions in *Smith and Hines* as they pertained to the development of Federal substantive labor law. The Appeals Court's decision on the issue of individual employee monetary liability is in accordance with Congressional purpose under §301 and with this Court's direction to Federal courts to exercise, "judicial inventiveness" in §301 cases by looking at Congressional policy in fashioning a remedy that effectuates that policy.

III. THE INTEGRITY OF THE COLLECTIVE BARGAINING AGREEMENT AND THE LEGISLATIVE POLICY BEHIND §301 OF ASSURING INDUSTRIAL PEACE WILL BE PRESERVED WITHOUT PERMITTING AN EMPLOYER TO RECOVER MONETARY DAMAGES FROM THEIR EMPLOYEES WHO PARTICIPATE IN UNAUTHORIZED WORK STOPPAGES IN BREACH OF THE COLLECTIVE BARGAINING AGREEMENT.

A. To Assure the Integrity of the Collective Bargaining Agreement It Is Not Necessary That an Employer Have a Damage Action Remedy Under §301 Available to Use Against Its Employees Participating in an Unauthorized Work Stoppage in Breach of the Collective Bargaining Agreement.

This Court has questioned the advisability of an employer's use of the money damage remedy even against a union as an instrument of achieving industrial peace. *Boys Markets, Inc.*, v *Retail Clerks Union, Local 770*, 398 U.S. 235 at 248 (1970). This Court stated:

> An award of damages after a dispute has been settled is no substitute for an immediate halt to an illegal strike. Furthermore, any action for damages prosecuted during or after a labor dispute would

> only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union. *Boys Markets,* at 248.

This Court has concluded an employer certainly has the right to discharge or discipline employees engaged in an unauthorized work stoppage in violation of the collective bargaining agreement; the employees' participation in the unauthorized work stoppage in violation of the collective bargaining agreement would be unprotected activity. *Atkinson* v *Sinclair Refining Company,* 370 U.S. 238 at 246 (1970); *Emporium Capwell Co.* v *Western Addition Community Organization,* 420 U.S. 50 at 72 (1975). This court stated:

> It is universally accepted that the no-strike clause in a collective bargaining agreement at the very least establishes a rule of conduct or condition of employment, the violation of which by employees justifies discipline or discharge. (Citations omitted.) The conduct charged in Count II is therefore within the scope of a violation of the collective bargaining agreement. *Atkinson* v *Sinclair* at 246.

The Petitioners' argued this Court's decision in *Carbon Fuel Company* v *United Mineworkers of America,*____U.S. ___, 100 S. Ct. 410 (1979) coupled with the Appeals Court's decision denying it a money damage remedy against the individual employees who participated in the unauthorized work stoppage totally denies the employer a money damage remedy to recoup its monetary losses in this situation. However, Petitioner has failed to point out it acted on its own not to seek a money damage remedy against the union long before this Court's decision in *Carbon Fuel* issued. (App. A, 9a) The Petitioner has not lost any remedy due to this Court's decision in *Carbon Fuel* that it had not already abandoned.

This Court's decision in *Carbon Fuel* in no way alters an employer's remedies against its employees for participat-

ing in an unauthorized work stoppage in violation of the collective bargaining agreement. The employer can enjoin the work stoppage under §301. *Boys Markets,* 398 U.S. 235 at 254 (1970) An employer can discharge or discipline its employees who participate in an unauthorized work stoppage. *Atkinson* v *Sinclair Refining,* 370 U.S. 238 at 246 (1962); *Emporium Capwell Co.* v *Western Addition,* 420 U.S. 50 at 72 (1975).

While the Senate Report indicates the primary advantage an employer expects to derive from a collective bargaining agreement is the assurance of uninterrupted operation during its term, it does not follow the employer can obtain a money damage remedy against its employees under §301 if the employees interrupt their employer's operation by an unauthorized work stoppage during the term of the collective bargaining agreement. S. Rep. No. 105 at 16. The Legislative history of §301 does not support Petitioners' argument. During deliberation on §301, Congress was well aware of employee participation in wildcat strikes and that the employee participation was without union authorization, support or sanction. During the Congressional deliberation of §301, it was apparent Congress did not intend to afford employers a money damage remedy to be used against employees participating in an unauthorized work stoppage although Congress was aware of the number of and employee participation in the wildcat strikes.[18]

Therefore, the same situations these employers find themselves having allegedly incurred financial losses while their employees participated in an unauthorized work stoppage was a situation Congress knew was occurring and had discussed during the Congressional debates on §301, and the Legislative history of §301 reveals Congress did not intend to provide employers with a money damage remedy for these wildcat work stoppages. *Sinclair Oil Corp.* v *Oil, Chemical & Atomic Workers Int'l Union,* 452 F. 2d 49 at 54 (7th Cir. 1971)

[18] See. Text of Congressional discussion at Footnote 10, supra.

B. Exempting Employees From Individual Liability Does Serve a Legitimate Purpose Under Federal Labor Policy.

The Legislative history of §301 reveals a major purpose in its passage was to stabilize and insure industrial peace. S. Rep. No. 105 at 15, 17. This Court has questioned the advisability of an employer's use of the money damage remedy even against a union as an instrument of attaining industrial peace. *Boys Markets,* 398 U.S. 235 at 248 (1970) This Court concluded an employer's action for money damages against a union during or after a labor dispute tends to aggravate industrial strife and delays an early resolution of the difficulties between an employer and union. *Boys Markets,* at 248.

It would aggravate industrial strife, delay early resolution of disputes, and be more disruptive of industrial peace to permit an employer's action for money damage remedy against individual employees who participate in unauthorized work stoppages in breach of the collective bargaining agreement. If such cause of action was permissable under §301, once an employer obtained a money judgment against its employees, unless it opted not to do anything further, then it would institute post-judgment collection action such as garnishment, attachment or execution against its employees. It is difficult to imagine anything less conducive to promoting industrial peace and stabilizing industrial relations. The specter of the Danbury Hatters cases referred to in legislative discussion over the enactment of §301 certainly had to include the post-judgment collection action experienced by the employees who were exposed to such actions. 92 Cong. Rec. 5705 (1946) (Sen. Taft); 93 Cong. Rec. 6283 (1947) (Rep. Case). The Congressional concern with a repetition of the situation that occurred in the Danbury Hatters cases where many employees lost their homes was expressed during the debate. 93 Cong. Rec. 5014 (1947) (Sen. Ball).

The no-strike obligation does not become a hollow promise nor does it become meaningless without the employer's right to maintain a cause of action for money damages under §301 against its employees participating in an unauthorized work stoppage. The employer is able to enforce breaches of the no-strike provision of the collective bargaining agreement against its employees by enjoining such work stoppages. *Boys Markets*, 398 U.S. 235 at 254 (1970); the employer has the right to discharge or discipline employees participating in an unauthorized work stoppage in breach of the collective bargaining agreement. *Atkinson* v *Sinclair Refining*, 370 U.S. 238 at 246 (1962); *Emporium Capwell*, 420 U.S. 50 at 72 (1975). Of course, the union has the right to discipline its disobedient members who participate in the unauthorized work stoppage against the employer by fining them if they refuse to return to work after the union has requested them. *Sinclair Oil Corp.*, 452 F. 2d 49 at 53 (1971). The employer's present methods of enforcing breaches of the no-strike provisions insure the no-strike obligation will not become meaningless.

The Fourth Circuit in *Putnam Fabricating Co.* v *Null*, ___F. 2d___, 105 LRRM 2645 (4th Cir. 1980) stated they were influenced by the arguments relied upon in *Sinclair Oil*, by the Seventh Circuit in rejecting an employer's cause of action for money damages against its employees who participated in an unauthorized work stoppage; thereafter, the Fourth Circuit stated they were also influenced by the fact:

> That in some nine years since the Seventh Circuit decided *Sinclair Oil*, Congress has not seen fit to take any action to alter the result in that case. *Putnam Fabricating*, 105 LRRM 2646 at 2646.

Since the Seventh Circuit's decision in *Sinclair Oil*, Congress had ample time to rectify and correct any erroneous misconceptions the Federal courts have entertained relating to the remedies available an employer under §301 in actions

against employees who participate in unauthorized work stoppages against employers, including a money damage remedy. Congressional silence on this issue is significant.

C. Allowing a Damage Action Against Individual Employees in the Instant Case Without Congressional Action to Amend §301 Will Mark a Return to the Era of the Danbury Hatters Cases.

As the Fourth Circuit in *Putnam Fabricating*, ___F. 2d ___, 105 LRRM 2645 at 2646 (1980) pointed out that in the nine years since the Seventh Circuit's decision in *Sinclair Oil*, Congress has not seen fit to alter the results of that case by amending §301. Since then, there have been decisions of other Federal courts prior to the decision of the Appeals Court in the instant case. e.g. *Westinghouse Electric Corp.* v *Electrical Workers*, 470 F. Supp. 1298 (W.D. Pa. 1979); *Benada Aluminum Products Co.* v *United Steel Workers*, 83 Lab. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); *United States Steel Corp.* v *UMW, Local 8003*, 83 Lab. Cas. (CCH) Par. 10, 612 (D. Utah 1978), and Congress has remained silent. In light of these decisions, Congressional silence should certainly be considered tacit approval of the results of these Federal court's construction of §301 on the issue of individual employee liability in money damages to their employers for their participation in an unauthorized work stoppage. If employers were permitted any money damages remedy under §301 against their employees who participated in an unauthorized work stoppage, it would result in and subject the employees to the same type of inherent harm experienced by the Danbury Hatters members. Employees' wages would be garnished, attachment and execution against their possessions would occur. The specter described in the Congressional debate would be revisited. The repetition of what happened to the Danbury Hatters members losing their homes and possessions would occur again. 93 Cong. Rec. 5014 (1947) (Sen. Ball).

If there ever is to be a return to the Danbury Hatters era, Congress should determine it by enacting legislation or

amending §301 to specifically permit employers to bring an action for money damages against its employees for breach of the collective bargaining agreement. Permitting an employer to sue its employees for money damages who participate in unauthorized work stoppages will not lead to stable nor peaceful industrial relations; quite to the contrary it will only exacerbate the situation. This Court has already stated that the prosecution by the employer of a money damage action against a union during or after a labor dispute would only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union. *Boys Markets*, 398 U.S. 235 at 248 (1970). It would be equally disruptive and counterproductive in attaining stable and peaceful industrial relations to permit an employer a cause of action for money damage relief against its employees.

The existing remedies available to an employer, discharging and disciplining employees who breach a collective bargaining agreement, *Atkinson and Emporium Capwell*, or enjoining the unauthorized work stoppage, *Boys Markets*, and the union's ability to fine members refusing to return to work after the union has requested them to do so, *Sinclair Oil*, are sufficient to assure compliance with the enforcement of the terms of the collective bargaining agreement. The void the Petitioner is asking this Court to fill between *Atkinson* v *Sinclair Refining*, 373 U.S. 238 (1970) and *Carbon Fuel Company*, 100 S. Ct. 410 (1979) should be left to Congress to fill by amending §301 if Congress deems it appropriate.

Employees are accountable to their employer every day and are required to adhere to their obligations under the collective bargaining agreement. An employee's failure to abide by the terms of the collective bargaining agreement subject the employee to being disciplined up to and including discharge. The employer's prerogative to discharge or discipline employees who breach the collective bargaining agreement assures the integrity of the collective bargaining

agreement agreement is served and maintained and acts as a strong deterent to any employee refusing to fulfill his obligations under the collective bargaining agreement. Additionally, the employer can enjoin in a §301 action unauthorized work stoppages in breach of the collective bargaining agreement. *Boys Markets*, 398 U.S. 235 at 248 (1970) and its decision to discipline or discharge employees participating in an unauthorized work stoppage will be supported. *Atkinson* v *Sinclair Refining*, 373 U.S. 238 at 246 (1962); *Emporium Capwell*, 420 U.S. 50 at 72 (1975). These are the remedies available to an employer for use when confronted with an unauthorized work stoppage of its employees.

CONCLUSION

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Sixth Circuit should be affirmed.

Respectfully submitted,

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No. 79-1777

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

I. INTRODUCTION

Respondents argue that §10(d) of H.R. 4908, 79th Cong. 2d Sess. (1946) (the Case bill) represents the Congressional expression that the loss of employee status was contemplated as the sole basis for handling employee breaches of a collective bargaining agreement arising from participation in unauthorized work stoppages. (Resp. Br. 15-16, 20)[1] Respondents also assert that their position is supported by this Court's recognition in *Charles Dowd Box Co. Inc.* v. *Courtney,* 368 U.S. 502 (1962) that §10 of the Case bill was the direct antecedent of §301 of the Labor Management Relations Act of 1947. (Taft-Hartley Act) (Resp. Br. 16, 20, 24)

Amicus AFL-CIO asserts in its brief that Congress "clearly determined" that a suit for damages against indi-

[1] Citations to "Resp. Br." refer to the Brief for the Respondents. Citations to "Am Br." refer to the Brief of the *Amicus* AFL-CIO.

vidual employees would not be available under §301. (Am. Br. 6) *Amicus* also states that the legislative history demonstrates "unequivocally" that Congress focused on the question of individual liability and "consciously precluded" such liability. (Am. Br. 7) *Amicus,* in its brief, reviews the legislative history of the Case bill and the Taft-Hartley Act and concurs with Respondents that Congress intended employers to have the right to discharge employees who engage in wildcat strikes. (Am. Br. 7)

The Respondents' analysis of the legislative history of §301 of the Taft-Hartley Act is defective since it fails to acknowledge the fact that §10(d) of the Case bill[2] was not included in either the House or Senate bills or in the bill approved by the Conference Committee. *Amicus* AFL-CIO attempts to minimize the significance of the absence of the provision by arguing that the same "end" was nonetheless accomplished in the Senate Bill. (Am. Br. 22-23. n. 14)

Respondents' reliance upon the legislative history of §10(d) of the Case bill as supporting its position that Congress foreclosed the avaiiability of relief sought by Petitioners is unfounded. §301 of the Taft-Hartley Act neither contains a provision similar to §10(d) of the Case bill nor does it contain a provision which specifies that employees who participate in strikes in violation of a collective bargaining agreement which are not ratified or approved by the bargaining representative will lose their status as "employees" under the National Labor Relations Act, 49 Stat. 449, as amended by the Taft-Hartley Act.

---

[2] Section 10(d) of the Case bill, as passed by both houses, reads:

> (d) Any employee who participates in a strike or other interference with the performance of an existing collective bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights with such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of Sections 8, 9 and 10 of the National Labor Relations Act: Provided. That such loss of status for such employee shall cease if and when he is re-employed by such employer.

Amicus attempts to minimize and to rationalize the absence of the language of §10(d) which had been contained in the proposed bill of Senators Ball, Taft, and Smith in S. 55. These attempts should be rejected as unfounded. The recitation of the legislative history of §301 (Am. Br. 16-29) establishes the Congressional concern for individual liability as ultimately manifested in §301(b) but does not establish a concurrent intent by Congress to foreclose the availability of a damage action against employees who participate in an unauthorized work stoppage in violation of the collective bargaining agreement.

II. THE LEGISLATIVE HISTORY OF §301 DOES NOT REVEAL THAT CONGRESS CONSCIOUSLY PRECLUDED INDIVIDUAL LIABILITY IN CASES OF THIS NATURE.

Respondents and *amicus* argue that the legislative history of §10 of the Case bill, which is the "direct antecedent" of §301 of the Taft-Hartley Act represents a clear expression of Congressional policy with respect to the remedy available against employees who in unauthorized work stoppages in violation of the collective bargaining agreement. Under Respondents' and *amicus'* interpretation of the legislative history of §301, discharge or discipline are the only options available to an employer. The Case bill, however, was vetoed, and Congress failed to override the veto.

Equally erroneous in the argument of Respondents and *amicus* with respect to the importance of the legislative history of §10(d) of the Case bill is their failure to acknowledge that §301 of the Taft-Hartley Act had its own unique legislative history. The proper emphasis should be upon the development of the provisions of §301 as enacted. In this case, Respondents apparently assert that the legislative history of §10(d) is determinative of the individual liability issue even though the language of that provision was not included in either the House or Senate bills or offered from the floor during debate as an amendment.

Petitioners submit that a review of the legislative history of the Labor Management Relations Act of 1947 will establish that Congress did *not* intend to preclude a damage action against individuals in this factual situation.

A. House Consideration.

Notwithstanding the inclusion of §10(d) in the bill that was vetoed a year earlier, Representative Case did *not* include a similar provision in his proposed bill in 1947. The provision in H.R. 725 pertaining to federal jurisdiction involving breaches of collective bargaining agreements was divided into three subparts.[3] None of the subparts deal with the action that an employer may or may not take against individual employees.

Amicus argues that Representative Case made it clear before the House Committee that, under his proposal, individual employees would only be subject to discharge and not subject to a suit for damages. (Am. Br. 18) Petitioners submit that the excerpts from the House hearing quoted by *amicus* do not convey accurately the context in which the statements were made. The full exchange between Representatives Case and Landis is as follows:

> Mr. Case. Of course, if you cannot get jurisdiction over a group of workers, you cannot sue them. I mean, under H.R. 725, because there is no provision for suing individual workers, as such, or rendering any judgment against them.
>
> However, if you had a wildcat strike, I assume that there must be some organization that caused the strike, and if you can find parties where you can get service, and the court would accept jurisdiction, you can proceed there.
>
> But, of course, even in H.R. 725, under that provision relating to unfair labor practices, and the pow-

[3] The text of the proposed section of H.R. 725 is found in *Amicus* AFL-CIO's brief on page 17 in note 11.

> ers given to the National Labor Relations Board, they can proceed to deny recognition and deny the benefits of the Wagner Act to the members of the wildcat strike.
>
> Mr. Landis. I agree that you can deny the members the rights of the Wagner Act, but say there is one coal mine—we had an instance in Indiana where one coal mine went out on a wildcat strike, and the United Mine Workers organization did not like it, and they tried to get the men to go back to work, and they would not go back to work, and still refused to go back to work for several days.
>
> Who would you sue in that case?
>
> Mr. Case. Of course, I would think the United Mine Workers, as an organization, would have a pretty good defense to any suit for damages against them, if they ordered to men back to work.
>
> It would seem to me, if you had a local that went out on strike, and they were parties to a contract, the local would be liable for damages.
>
> Mr. Landis. The local organization?
>
> Mr. Case. Yes.
>
> Hearings Before the House Committee on Education and Labor on Amendments to the National Labor Relations Act, 80th Cong. 1st Sess. 125-26 (1947)

Amicus also includes in its brief (Am. Br. 18) an exchange between Representatives Hoffman and Case that pertains to the availability of damages against union leaders who call a strike in breach of the collective bargaining agreement. In order to fully understand the exchange between Representatives Hoffman and Case, the Court should have the benefit of the hypothetical situation posed by Representative Hoffman to which Representative Case responded. The exchange reads as follows:

Mr. Hoffman. So, it is just a voluntary organization composed of a group of individuals and a strike is called by the individuals, and the officers go ahead and call a strike and they violate a contract and the employer suffers damage. The organization itself may not have any assets. Do you think the individuals who authorize these fellows to break that contract and cause that damage should escape liability for their own action?

Mr. Case. Of course, there are other provisions. If they did that, they would lose their status as a labor organization.

Mr. Hoffman. That does not put dollars into the treasury of the employer.

Mr. Case. No; but I do not think you are going to get anywhere in this workmen's legislative problem if you are going to resurrect such a situation as in the Danbury Hatters' case. We are going to have to live with any legislation you enact, and it seems to me what you seek to do is to enact legislation that will stand up and with which you can live. The bill would protect the employer in getting other employees.

Mr. Hoffman. Under your theory what you say is that this voluntary organization known as a labor organization can break a contract and cause damage and yet the individuals who do that are not responsible.

Mr. Case. I do not say any such thing and the record should not be interpreted to show that.

If the organization should abuse its status as a labor organization, and if the laws of any State are what I concede they are in my State, if the leaders of the organization did what you said they did, they would be liable for action under various laws depending

> upon the kind of damage they did. (House hearings at 136)

The reference by Representative Case to the Danbury Hatters' case was in the context of officers of a labor organization who call a strike. The situation posed to Representative Case would be covered by §305(b) of H.R. 725 which was similar to §301(b), 29 U.S.C. §185(b) as enacted, since in the hypothetical situation the officers were acting as agents of the labor organization.

There is nothing in the House report on the House bill pertaining to the limitation of damage actions against employees who engage in unauthorized work stoppages in violation of a collective bargaining agreement. The report did state that a labor organization is to be bound by the acts of its agents and may sue or be sued. Any money judgment against the organization could be enforced only against the organization and not the individual members. H.R. Rep. No. 245, 80th Cong., 1st Sess. 46 (1947).

B. Senate Consideration.

At the hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S.J. Res. 22, 80th Cong., 1st Sess. (1947), Senators Taft, Ball, and Smith introduced S. 55. §302 of the proposed bill pertained to suits by and against labor organizations and consisted of four subparts.[4] The language of §302(d) is substantially similar to the language of §10(d) of the Case bill.[5] In his statement to the Committee, Senator Ball described §(d) in the following terms:

> [S]ubsection (d) protects the union from liability for unauthorized wildcat strikes and makes the

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[4] The provisions of §302 of S. 55 are set forth in Amicus AFL-CIO's brief in note 13 on pages 21 and 22.

[5] The inclusion of §10(d) in the Case bill was a result of an amendment offered by Senator Taft. See, 92 Cong. Rep. 5705. The language of §10(d) was initially set forth by Senator Ball on behalf of Senators Taft and Smith as Amendment No. 3 in the Minority Views on S.R. 1177, 79th Cong., 2d Sess. 10-14 (1946).

> employees who participate in such wildcat strikes liable to the extent of losing their legal privileges under the National Labor Relations Act. [Senate hearings at 14]

The provision was not incorporated in S. 1126 as reported. No mention is made of that proposed section or its effect in the Senate report. S. Rep. No. 105, 80th Cong., 1st Sess. (1947) Senators Taft, Ball, Donnell, and Jenner set forth in a separate section to the Senate report four provisions which they felt should be included in the bill and indicated their intention to offer the amendments on the Senate floor. Senate Report, pp. 50-56. The language of §(d) is neither one of the provisions mentioned in the supplemental views nor is it otherwise discussed.

During the Senate debates on the Committee bill, no mention was made of §(d) or the reasons why it was not included under the proposed §301 as it had been in §10 of the Case bill. No amendment was offered to include the language.

The Conference report resolved minor language differences in the provisions of the House and Senate bill pertaining to suits by and against labor organizations. No discussion concerning remedy against individuals is found in the report. H. Conf. R. No. 510 on H.R. 3020, 80th Cong., 1st Sess. 65-66 (1947).

Amicus acknowledges in its brief that the subsection authorizing the discharge of wildcat strikers was not included in §301 of the Senate bill. *Amicus* attempts to minimize the importance of this omission and states "that end was accomplished in the Committee bill by making strikes in breach of collective agreements unfair labor practices and thus unprotected." (Am. Br. 23, n. 14)

The Senate Committee report did provide for such an unfair labor practice but made it clear that it did not intend for the National Labor Relations Board to adjudicate all

disputes alleging breaches of collective bargaining agreement. S. Rep. No. 105 at 23. Such a result was not viewed as conducive to the purpose of the bill in encouraging collective bargaining. The report stated:

> In short, the intention of the committee in this regard is that cases of contract violation be entertained on a highly selective basis, when it is demonstrated to the Board that alternative methods of settling the dispute have been exhausted or are not available. S. Rep. No. 105 at 23.

The Senate's proposed unfair labor practice, which was intended to be limited in scope, was rejected by the Conference report. The Committee report stated:

> The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual process of the law and not to the National Labor Relations Board. H. Conf. R. No. 510 at 42.[6]

Contrary to *amicus'* contention, the "end" of the rejected subsection (d) was not accomplished in the statute as enacted. The rejection by the Conference Committee of the proposed unfair labor practice undercuts *amicus'* apparent position that the absence of the express language of the §203(d) of S. 55 is not determinative of the issue of Congressional intent to limit any employer's remedy.

Amicus has included in its brief an exchange between Senators Morse and Taft pertaining to Senator Taft's amendment which establishes a damage action against labor organizations that engage in illegal secondary activity. (Am. Br. 24-26) *Amicus* asserts that the significance of the dis-

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[6] In *Charles Dowd Box Co. Inc.* v. *Courtney*, 368 U.S. 502, 513 (1962), this Court recognized that Congress deliberately chose to leave the enforcement of collective bargaining agreements to the "usual processes" of the law.

cussion arises from Senator Taft's acceptance of Senator Morse's views on §301 and the proposed §303. (Am. Br. 26)

Petitioners submit that the discussion and subsequent revision by Senator Taft establishes only that Senator Taft agreed that individual union members acting on behalf of a union in a secondary boycott should not be subject to individual liability. Senator Taft's insertion of "labor organization" in the place of "person" brought his amendment in line with the intent of §301(b). See 93 Cong. Rec. 4840.

In their Supplemental Views on S. 1126, Senators Taft, Ball, Donnell, and Jenner urged for the adoption of a provision which would make secondary boycotts and jurisdictional strikes unlawful and which would provide a damage action by any damaged party. S. Rep. No. 105 at 54-56. It is clear from the report that Senator Taft and the others were concerned with improper *union* conduct. The Senators were concerned with the power of labor unions being used indiscriminately against the small businessman. S. Rep. No. 105 at 54.

The discussion between Senators Morse and Taft does not support any inference that Congress intended to preclude damage suits against individuals acting in derogation of their bargaining representative and in violation of their collective bargaining agreement. The discussion does establish that Senator Taft changed his amendment to make it consistent with the policy manifested in §301 that a damage action against a labor organization for acts performed by its agents can only be enforced against the assets of the organization.[7] By its very nature, a secondary boycott is conducted by union members acting on behalf of their union.

[7] The liability of the individual union members in the Danbury Hatters' case was based on the actions of the officers of the labor organization. The jury had been instructed that if the members paid their dues and continued to delegate authority to their officers to unlawfully

(Continued on Page 11)

Amicus has attempted to piece together segments of the legislative history of the Taft-Hartley to establish implicitly what Congress failed to do explicitly. *Amicus* recitation of certain aspects of the legislative history of §301 *does not* refute Petitioners' contention that the legislative history of §301 does not indicate that Congress intended to limit the relief available to an injured party under the factual situation of this case. The recitation does, however, highlight the absence of any explicit Congressional intention to prohibit actions against individual employees as sought by Petitioners.

III. RESPONDENTS' ASSERTION THAT THE REMEDY OF DISCHARGE OR DISCIPLINE OF EMPLOYEES IS LESS DISRUPTIVE OF INDUSTRIAL PEACE THAN A DAMAGE ACTION AGAINST INDIVIDUALS WHO ARE RESPONSIBLE FOR AN UNAUTHORIZED WORK STOPPAGE IS ERRONEOUS.

Respondents argue in their brief that the availability of a damage action against individual employees who participate in an unauthorized work stoppage in violation of the collective bargaining agreement would aggravate industrial strife, would delay early resolutions of disputes, and would be disruptive of industrial peace. (Resp. Br. 30) Respondents concede, however, that an employer has the prerogative to discipline or to discharge such employees if they are found to have participated in such unlawful conduct. (Resp. Br. 31)

(Continued from Page 10)

interfere with the company's business, and if the officers were warranted in believing that they were acting in matters within their delegated authority, the members were jointly liable. *Lawlor* v. *Loewe*, 235 U.S. 522, 535 (1915) This Court stated that the members who did not know in a specific case what was done were nonetheless "bound to know the constitution of their societies." 235 U.S. at 536.

Petitioners do not assert that Respondents' liability would be based on membership in a group. Petitioners would have to establish, at a minimum, actual participation in the unauthorized work stoppage. This matter would be for the determination of the trial court.

Respondents' policy argument assumes that discharge, described by one appellate court as "the industrial equivalent of capital punishment,"[8] is less inflammatory than a damage action against the individual employees. This assumption is untenable. The penalty of discharge is at least as, if not more, disruptive of industrial peace than the maintenance of individual damage actions. It cannot be seriously argued that employees will be more appreciative of an employer who discharged participants in a wildcat strike than of one who attempted to sue the participants for damages arising out of proven violations of a contractual no-strike clause.

Respondents state that once a money judgment is obtained, an employer would institute post-judgment collection proceedings and observe:

> It is difficult to imagine anything less conducive to promoting industrial peace and stabilizing industrial relations. Resp. Br. 30.

Petitioners have no similar difficulty and suggest that the prospect of employers being subjected to unauthorized work stoppages in violation of collective bargaining agreements which curtail normal business operations with no available remedy to recover the losses caused by the unlawful conduct is more disruptive of the collective bargaining relationship. The deterrent effect of the damage action sought by Petitioners more than outweighs any incidental disruptive effect on the collective bargaining relationship.

IV. CONCLUSION

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Sixth Circuit should be reversed with instructions to reinstate the damage claim.

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[8] *Griffin* v. *UAW*, 469 F.2d 181, 183 (4th Cir. 1972)

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APPENDIX

LISTING OF PARENT COMPANIES AND AFFILIATES OF PETITIONERS

Pursuant to Rule 28.1, Petitioners set forth the following information. Petitioner Complete Auto Transit, Inc. is a subsidiary of Ryder Systems, Inc. Affiliated companies are as follows:

Customized Parts Distribution, Inc.
Delavan Industries, Inc.
Murray Sandblast and Paint, Inc.
DPD, Inc.
Driveaway, Inc.
Janesville Auto Transport Company
M & G Convoy, Inc.
MTI Trailers, Inc.
Newark Releasing & Storage Co.
RDR, Inc.
RDR of Georgia, Inc.
RMX, Inc.
RPD, Inc.
Ryder Carrier Company
Ryder Europe, B.V.
Ryder Finance, Inc.
Ryder Capital Corp., Inc.
Ryder Equipment Corp., Inc.
Ryder Finance of Nevada, Inc.
Ryder Equity, Inc.
Ryder Leverage, Inc.
Ryder Realty, Inc.
Ryder Student Assistance Fund, Inc.
Ryder System, B.V.
Ryder Truck Rental, Ltd. (U.K.)
Ryder Truck Rental, Inc.
Ryder International Sales Corporation
Ryder Truck Rental, Limited
Ryder Truck Rental-One Way, Inc.
Southern Underwriters, Inc.
Specialized Parts Distribution, Inc.
Jack Rabbit Express Company
Specialized Transportation, Inc.
Summit Industries, Inc.
The Federal Assurance Company
Truckstops Corporation of America
Fleet Control Services, Inc.
Moore Brothers Oil Co., Inc.

Petitioner Automobile Carriers, Inc. is a subsidiary of Ralph C. Wilson Industries, Inc. Affiliated companies are as follows:

Ralph C. Wilson Claim Service, Inc.
WWTV
WWUP
KTSB
KGSC
Ralph C. Wilson Management Company, Ltd.
C & J Commercial Driveaway, Inc.
Motorcar Transport Company
Highwood Service, Inc.
Fotomat Drivethrough
Buffalo Bills, Inc.
Cole and Brown Agency, Inc.
Lockmoor Insurance Agency
Inland Tool and Manufacturing, Inc.
Ralph C. Wilson Agency
Inland Tool and Manufacturing, Inc.
Beam Industries, Inc.
Balfour Industries, Inc.
Wilson Communications, Inc.

Petitioner F. J. Boutell Driveaway Co., Inc. has recently been purchased by Ryder Systems, Inc. The purchase is subject to Interstate Commerce Commission approval. When the purchase is completed, Boutell will become a subsidiary of Ryder System, Inc.

No. 79-1777

In The Supreme Court of the United States

October Term, 1980

COMPLETE AUTO TRANSIT, INC., *et al.*,

Petitioners,

v.

DANNY REIS, *et al.*,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AS AMICUS CURIAE

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3 3 PRINTED IN U.S.A.

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MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the respondents in this case.

INTEREST OF THE AFL-CIO AND THE ISSUE TO BE COVERED IN THE AFL-CIO'S BRIEF AMICUS CURIAE

The issue presented here concerning the right of employers to bring § 301 * damage actions against individual em-

* Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. 185.

ployees, viewed as one of pure policy, is from the labor movement's perspective both sensitive and difficult. On the one hand, the prospect that employers, in addition to the other powers vouchsafed them, should be able to bring economically ruinous damage actions against individual employees who engage in concerted activity not protected by § 7 ** —even activity not authorized by their exclusive bargaining representative—is anathema. On the other, such wildcat activity undermines the very collective bargaining system that produces collective agreements and the employee benefits they provide and that is vastly preferable to any other system of industrial relations.

The petition for a writ of certiorari, the brief in opposition thereto and petitioners' brief treat the issue in this case as one that Congress did not focus on and which must therefore be decided with only the overall national labor policy as a guide. Given the conflicting pulls on our loyalties, if that assessment were accurate we would have little if anything to add to the discussion. But we disagree with that reading of the legislation, and its history. Our review of the relevant materials in the attached brief *amicus curiae* shows that the sponsors of § 301 and of its antecedent, § 10 of the Case bill (H.R. 4908, 79th Cong., 2d Sess.), made a considered judgment that precluding employer damage suits against individual employees was necessary "to get anywhere in this workmen's legislative problem". (Hearings before the Committee on Education and Labor on Amendments to the National Labor Relations Act, 80th Cong., 1st Sess. (1947) at 136 (Rep. Case).) Since that legislative judgment, rather than an *ad hoc* balancing of the conflicting interests of employees, of employers, and

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** Section 7 of the Labor Management Relations Act of 1935, 29 U.S.C. 157.

of the collective bargaining system controls this case, we file this brief to place the full legislative record before the Court.

CONCLUSION

For the above stated reasons this motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AS AMICUS CURIAE

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in this case is whether a § 301 [1] damage

---

[1] Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, which provides:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

action will lie against individual employees who have engaged in a concerted work stoppage not authorized by their exclusive bargaining representative that occurs during the term of a collective agreement containing a clause forbidding strikes.

The answer to that question is to be determined as a matter of "federal law, which the courts must fashion from the policy of our national labor laws." (*Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, 456.) The Court there described the process of analysis as follows:

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

> The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. [*Textile Workers,* 353 U.S. at 457, reaffirmed in *Howard Johnson Co.* v. *Hotel Employees,* 417 U.S. 219, 225]

This approach was followed in *Atkinson* v. *Sinclair Refining Co.,* 370 U.S. 238, which "hold[s]" that § 301(b), which in terms bars only the collection from individuals of judgments against a union, evidences a "national labor policy" that "when a union is liable for damages for violation of [a] no-strike clause, its officers and members are not liable for these damages," (*id.* at 249). That conclusion, the Court said, is "require[d]" by

> The legislative history of § 301(b) [which] makes it clear that [the Section's] third clause was a deeply felt congressional reaction against the *Danbury Hatters* case (*Loewe* v. *Lawlor,* 208 U.S. 274; *Lawlor* v. *Loewe,* 235 U.S. 522), and an expression of legislative determination that the aftermath (*Loewe* v. *Savings Bank of Danbury,* 236 F. 444 (C.A. 2d Cir.)) of that decision was not to be permitted to recur. . . . In the debates, Senator Ball, one of the Act's sponsors, declared that § 301, "by providing that the union may sue and be sued as a legal entity, for a violation of contract, and that liability for damages will lie against union assets only, will prevent a repetition of the Danbury Hatters Case, in which many members lost their homes" (93 Cong. Rec. 5014). [370 U.S. at 248.]

The *Atkinson* Court expressly left open the question whether a claim under § 301(a) would lie "if it charged unauthorized, individual action," *viz.,* a work stoppage by

individuals "acting not on behalf of the union but in their personal and non-union capacity." (*Id.* at 249 n. 7.) And, in this case, petitioners urge this Court to answer that open question by holding that the Congressional policy protecting individual employees against damage suits is limited to the situation where the union has authorized the strike and is therefore open to liability.

The distinction which petitioners urge cannot be justified, even in theory, on the view that Congress wished to protect individuals against damages only where the employer is able to obtain a monetary recovery against the union. In *Atkinson* the Court directed that the count for damages against the individuals "must be dismissed on the merits for failure to state a claim upon which relief can be granted" (*id.* at 245), even though at that time the Court could not have known whether the union would have sufficient funds to pay any judgment ultimately rendered on the other count of the complaint, which named the union as a defendant. Nor do petitioners provide an explanation of why Congress would adopt a policy leaving individual employees vulnerable to damage suits simply because they join an unauthorized strike, even though they are not subject to such suits if as union agents they *cause* the strike for which the union is liable. And petitioners' position would enable employer-plaintiffs to name the union and all the striking employees as defendants and to allege in the alternative that a strike was, and was not, authorized by the union. Even in the cases squarely covered by *Atkinson*—those in which the strike is authorized—this would cut into the protection § 301(b) was concededly enacted to provide, by requiring the individuals to finance the defense of the employer claim against them.

Petitioners moreover simply assume an essential predi-

cate of their claim—that a collective agreement creates legally enforceable duties against the covered employees who, of course, are not signatories, as well as against the signatories, the employer and the union. It is, as the *Atkinson* Court stated, "universally accepted that the no-strike clause in a collective agreement at the very least establishes a rule of conduct or condition of employment the violation of which by employees justifies discipline or discharge." (*Id.* at 246; see also the cases there cited.) But there is no indication that Congress considered employees to be obligors under such agreements. Indeed, with narrow exceptions, both the common law of contracts and § 301 require a manifestation of consent to make a person a party to an agreement and reject the notion that non-signatories are parties. (See *Howard Johnson*, 417 U.S. at 253 256.)[2]

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[2] To be sure, *Smith* v. *Evening News Assn.*, 371 U.S. 195, 200-201, holds that "suits by employees for breach of a collective bargaining contract . . . arise[] under § 301. . . ." But it does not follow, as petitioners contend (Pet. Br. 18-22), that employees are "parties" to such agreements. The common law, through the third party beneficiary doctrine, has long permitted non-signatories to sue on, as opposed to being sued on, a contract. Moreover, the *Smith* Court, in rejecting the contention that such employee suits do not arise under § 301(a), relied on the "language and structure" of the Section and stressed that a restrictive interpretation . . . would frustrate rather than serve the congressional policy expressed in § 301." (*Id.* at 200.) The decision in *Smith* did not turn on characterizing the employee-plaintiffs as "parties;" indeed, as we show below (pp 9-10), Congress' basic premise in enacting § 301 was that the "parties" to collective agreements are the signatory employers and unions.

So too in *Hines* v. *Anchor Motor Freight*, 424 U.S. 554, 562, which like *Smith* involved an employee § 301 suit against an employer, the Court observed in passing "Section 301 contemplates suits by and against individual employees as well as between unions and employers. . . ." Giving that passage full force would not lead

The most analogous common law exception to that rule—that providing that a contract signed by an agent binds the principal—does not fit in the labor law context. For the premise of the common law of agency does not accurately mirror the relationship between the exclusive bargaining representative and the employees in the bargaining unit. (Cf. *Elgin, J.&E.R. Co.* v. *Burley,* 327 U.S. 661, 663.) The former is based on the principal's individual decision denominating another to act for him; the latter is based on the rule of public law that the union selected by the *majority* of an appropriate employees unit is the representative of *all.*

But these logical and doctrinal difficulties with petitioners' claim need not detain us, for that claim is subject to a more conclusive objection: Congress clearly determined, in enacting § 301, that a suit for damages against individual employees would not lie thereunder. Petitioners are mistaken in the assertion on which they rest their contention that the court below erred:

> There is nothing in the legislative history that supports the "conclusion" of the Appeals Court that Congress intended to extend [the] protection [recog-

to petitioners' position—*Hines* does not state that § 301 contemplates employer *damage* suits against individual employees. In the instant case the employer-plaintiffs sought both injunctive relief and damages against the employee-defendants, and the employers were granted an injunction in the lower courts. *Hines* appears to presage approval of such judicial action. But that issue is not now before the Court, for that injunction is not challenged here. And, for the reasons we develop in the text, when the question of the propriety of § 301 employer injunction actions against individual employees is presented the Court may wish to reconsider the *Hines dictum.* The sole support cited for the sentence in question was *Smith,* which, as we have noted, did not decide that individual employees are parties to collective agreements, and § 301's legislative history reveals that Congress did not so regard them.

> nized in *Atkinson*] to individuals who act in their own individual capacity and not as agents of their union. [Pet. Br. 14.]

On the contrary, the legislative history demonstrates unequivocally that Congress focused on the question of individual employee liability for damages under what became § 301 and consciously precluded such liability. Three major lessons emerge from that legislative history:

First, Congress' purpose in § 301 was to make unions suable for breaches of their contracts. Section 301 was aimed at the common law rule precluding suit against unincorporated associations—a rule which, Congress felt, enabled unions to escape responsibility for breaching collective agreements.

Second, Congress affirmatively decided *not* to impose liability for damages on individual employees. In part, Congress sought to prevent a *Danbury Hatters* situation from recurring—*viz.*, a situation in which union members were held personally liable for the actions of their union. But the congressional concern went further: Congress reached the overall conclusion that individual employees should not be subjected to the risk of financial ruin at the hand of their employer even where the result is that the employer does not recover damages.

Third, to assure employers the means to protect themselves Congress instead made clear that employers have the right to discharge employees who engage in a wildcat strike.

ARGUMENT

In *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 509, this Court observed:

> The direct antecedent of § 301 [of the Labor Management Relations Act of 1947, P.L. 80-101, 61 Stat. 136]

> was §10 of the Case bill, H.R. 4908, 79th Cong., 2d Sess., which was passed by both Houses of the Congress, but vetoed by the President in 1946.

And, following the lead of that opinion (see *id.* at 509-513), we begin our description of § 301's legislative history by tracing the evolution of § 10 of the Case bill.[3]

A. The Case Bill

1. *House Consideration*

In December, 1945, President Truman sent a message to Congress requesting the enactment of a law to authorize the President, in the event of a labor dispute vitally affecting the public interest, to appoint a fact-finding board which would have the power to investigate the dispute and make recommendations; and to bar strikes and lockouts while the fact-finding board was at work.[4] The Committee on Labor conducted brief hearings on this proposal, and reported a bill (H.R. 4908) which would have provided for the appointment of such boards but would *not* have required a "cooling-off period." (See H.R. Rep. No. 1493, *supra.*)

During the floor debate on the Committee bill, Rep. Francis Case of South Dakota offered a substitute bill. (92 Cong. Rec. 836-38.) That bill would have established a "Labor-Management Mediation Board" with authority to mediate labor disputes "substantially affect[ing] the public interest" and to bar strikes and lock-outs for a thirty-day period while mediation was being attempted. (§§ 3-9, 92 Cong. Rec. 836-37.)

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[3] See also *Arroyo* v. *United States*, 359 U.S. 419, 425-427, where the Court, in construing § 302 of the LMRA, which also had its origins in the Case bill, looked to the history of that provision in the 79th, as well as the 80th, Congress.

[4] The text of the President's message is reprinted in H.R. Rep. 1493, 79th Cong. 2d Sess. (1946).

In addition, the Case bill contained several "miscellaneous provisions," including the antecedent of § 301.[5] The purpose of this provision—§ 10 of the Case bill—was explained in the preamble:

> The desired end of bargaining between management and labor is a contract. Once that contract is made, it must be equally binding and enforceable on both parties. [§ 2, 92 Cong. Rec. 836]

As Rep. Case put it during the debates, § 10 "seeks to establish a mutual responsibility when the collective-bargaining process has resulted in a contract." (92 Cong. Rec. 838.) Other proponents of his bill made similar statements, adding that such mutuality "does not now exist between labor and industry" in that "management has no redress in law" in the event a union breaches its agreement. (92 Cong. Rec. 662 (Rep. Andrews).)[6]

Section 10 provided in presently pertinent part: "All collective bargaining contracts shall be mutually and equally binding and enforceable . . . *against each of the parties*

[5] "Sec. 10. Binding effect of collective-bargaining contracts: All collective-bargaining contracts shall be mutually and equally binding and enforceable either at law or in equity against each of the parties thereto, any other law to the contrary notwithstanding. In the event of a breach of any such contract or of any agreement contained in such contract by either party thereto, then, in addition to any other remedy or remedies existing either in law or equity, a suit for damages for such breach or for injunctive relief in equity may be maintained by the other party or parties in any United States district court having jurisdiction of the parties. If the defendant against whom action is sought to be commenced and maintained is a labor organization, such action may be filed in the United States district court of any district wherein any officer of such labor organization resides or may be found."

[6] See also 92 Cong. Rec. 682 (Rep. Crawford), 684 (Rep. Jennings), 753 (Rep. Voorhis), 756 (Rep. McConnell), 771 (Rep. Robsion).

thereto." By "parties" the bill referred to the employers and the union, not the covered employees, as Rep. Case explained:

> I call attention to the fact that since the contracts are to be enforceable either at law or in equity against each of the parties thereto, that *an individual is not a party to a collective-bargaining contract, as far as labor is concerned. Relief granted will be toward the recognized bargaining agent rather than an individual, if the order applied to labor;* it might be an individual if the order were directed against the employer and he, as a contracting party were an individual. [92 Cong. Rec. 765 (emphasis added).]

All descriptions of § 10 during the House debates were in accord with Rep. Case's statement.[7] The House agreed to the Case substitute and passed the bill.

2. *Senate Consideration*

The House bill was transmitted to the Senate where it was referred to the Committee on Education and Labor. After conducted hearings the Committee reported a bill which did not include an analogue to § 10. But Senators Ball, Taft, and Smith filed a minority report in which they urged adoption of a number of amendments including "Amendment No. 3" which was similar to § 10 and even closer to what become § 301 of the LMRA.[8]

---

[7] E.g. 92 Cong. Rec. 853 ("We do create, if there is any doubt about its present existence, an action for damages for breach of contract against a labor organization or an employer") (Rep. Voryls); *id.* at 767 (Rep. Burch); *id.* at 771 (Rep. Robsion); *id.* at 772 (Rep. Goodwin).

[8] "TEXT OF AMENDMENT NO. 3"

"Amend H.R. 4908 by inserting at the proper place the following new section:

"Sec.—(a) Suits for violation of a contract concluded as the

The proponents of "Amendment No. 3" explained the need therefore:

> The initial obstacle in enforcing the terms of a collective agreement against a union which has breached its provisions is the difficulty of subjecting the union to process. The great majority of labor unions are unincorporated associations and at common law voluntary associations are not suable as such. As a consequence

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result of collective bargaining between an employer and a labor organization is such contract affects commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: Provided, that any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena or other legal process upon such officer or agent shall constitute service upon the labor organization.

"(d) Any employee who participates in a strike or other stoppage of work in violation of an existing collective-bargaining agreement, if such strike or stoppage is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights for such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of sections 8, 9, and 10 of the National Labor Relations Act: Provided, That such loss of status for such employee shall cease if and when he is reemployed by such employer. [Sen. Rep. 1177, 79th Cong., 2d Sess. Pt. II at 10-11 (1946) Minority Report)]

> the rule in all jurisdictions, in the absence of a statute, is that unincorporated labor unions cannot be sued in their common name. Accordingly, the difficulty of or impossibility of enforcing the terms of a collective agreement in a suit at law against a union arises from the fact that each individual member of the union must be named and made a party to the suit.
>
> * * *
>
> Even where unions are suable, the union funds may not be reached for payment of damages and any judgments or decrees rendered against the association as an entity may be unenforceable. However, only where statutes provide for recognition of the legal status of associations do association funds become subject to judgments.
>
> * * *
>
> It is apparent that until all jurisdictions, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective-bargaining agreements. [S. Rep. No. 1177, 79th Cong., 2d Sess., Pt. 2 at 12-13 (Minority Views of Sen. Ball, Taft, and Smith) (citations omitted).]

The justification offered by the minority report for "Amendment No. 3" is of especial importance for an additional reason. The minority, of course, sought to hold labor unions responsible for the collective agreements they sign. (See pp. 11-12 *supra*.) But that purpose could have been accomplished without the proviso in subsection (b) of the amendment (stating that judgments against a union "shall not be enforceable against any individual member or his assets") and without subsection (d) (permitting an employer to discharge employees who engage in wildcat strikes). Those features were designed to serve other policies: to protect employees from financial ruin at the hands of their employers and at the same time to provide

employers with a remedy—discharge—against wildcat strikes.[9] The minority explained:

> The amendment specifically provides that only the assets of the union can be attached to satisfy a money judgment against it. The property of the individual members of the organization would become absolutely free from any liability under such a judgment. Thus the members of the union would secure all the advantages of limited liability without incorporation of the union.
>
> The proposed amendment relative to union liability specifically provides that a labor organization would be bound by the acts of its authorized agents only. Thus a labor organization would not be liable for damages arising as a result of an unauthorized strike carried on in violation of a contract. If a union or an officer thereof did not authorize the strike or support it, or subsequently approve it, no liability would be imposed on the union as a consequence of the work stoppage. *To protect the employer against work stoppages in violation of an agreement but not approved by the union, employees who take part in such strikes would lose their status as employees under sections 8, 9, and 10 of the National Labor Relations Act. The employer could refuse to rehire them after the strike.* Besides providing a remedy for the employer for irresponsible interruptions of production, such a provision would tend to strengthen sound union discipline. [*Id.* at 12 (emphasis added).]

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[9] The discharge remedy was the one on which the Case bill had relied to penalize individuals who engage in certain actions which the Case bill would have made unlawful, such as (1) violence or threats "to prevent any individual from quitting or continuing in the employment of . . . any employer" (§ 11, 92 Cong. Rec. 838); (2) secondary boycotts (§ 13, 92 Cong. 838); and (3) boycotts to compel an employer to recognize a union during the term of a collective bargaining agreement between that employer and another union (*id.*).

During the Senate floor debates on the Committee bill, Senator Taft offered "Amendment No. 3." (92 Cong. Rec. 5705.) His explanation of the amendment and its purposes paralleled the explanation in the minority report, emphasizing the aim of holding labor unions "responsible on their collective-bargaining contracts," of protecting individual union members from personal liability, and of providing employers with a remedy against individuals who engage in wildcat strikes. (*Id.*) At the close of his remarks Senator Taft offered the following summation:

> If the union violates its collective-bargaining agreement, it is responsible but no individual member is responsible, and he can in no way be deprived of his rights. But if the union tries to keep its contract, and in violation of its undertaking, some of its members proceed to strike, then the employer may fire those members and they do not have the protection of the Wagner Act. [*Id.* at 5705-06.]

And, in response to questioning, Senator Taft added that where an employee violates a collective agreement by refusing to work, "the *only* penalty is to take away his rights as an employee of that employer." (*Id.* at 5707 (emphasis added).)[10] After brief additional debate, the amendment was adopted by the Senate (*id.* at 5723), and shortly thereafter the Senate approved the Committee bill as amended (*id.* at 5723).

---

[10] During the course of this debate Senator Taft engaged in the colloquy with Senator Capehart quoted at Pet. Br. 16-17, n. 13 and discussed by the Seventh Circuit in *Sinclair Oil Corp.* v. *Oil, Chemical & Atomic Workers, etc.*, 452 F.2d 49, 53 (C.A. 7). That court, we submit, was clearly right to reject Sinclair's reading of Senator Taft's response to the question Senator Capehart posed as allowing individual liability through employer damage suits rather than through union-imposed fines.

3. *The Senate Bill and the Presidential Veto*

Rather than convening a conference committee to resolve differences between the House and Senate bills, the House instead took up consideration of the Senate bill. Supporters of the Case bill advised the House that, with a few exceptions, there was not "anything . . . in this bill that the House has not previously substantially in the same language voted for in the bills that heretofore have been before the House." (92 Cong. Rec. 5926 (Rep. Smith).) With specific reference to the breach-of-contract provision, Rep. Case stated:

> All this section on suability does is to carry out the same purpose we had in the House bill, when we provided for making contracts actually binding upon both parties to it. It has been found that while a few States permit suing on a labor contract, many States do not. Unless you have some such provision in Federal law, collective bargaining contracts will not be good, in the words of the President, "for the lifetime of such contracts."
>
> So the Senate very carefully and properly drafted this provision in the way they did, to insure that "contracts", again in the words of President Truman, "once made must be lived up to" and "changed only in the manner agreed upon by the parties."
>
> Individual members of a union are not made liable for any money judgment, I might point out, but only the union as an entity. *If employees strike in violation of their agreement, the only individual penalty that can be employed is the forefeiture of their right to employment under that contract* which is cured when the employer reemploys them. [*Id.* at 5930-31 (emphasis added).]

Rep. Halleck made the same point:

> When the Case bill was before the House, the provisions in the contractual liability section were such as to lead some to urge—I thought wrongly—that the union would be responsible for the acts of the individual members of the union in going out on strike in violation of the union's wishes. The proposal that comes from the Senate makes it clear that the union is only responsible for the acts of its agents carried on under the scope of their authority.
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> • • •
>
> Mr. Speaker, there is substituted for that [the provision] which has to do with the responsibility of the individual who goes out on a wildcat strike in violation of a contract and in violation of the wishes of his organization. *All we say is that if he breaches his contract as an individual in that manner, his employer does not have to take him back unless he wants to. What is the matter with that?* [*Id.* at 5932 (emphasis added).]

Others referred to the contractual liability section as simply creating a cause of action against unions and employers. (*Id.* at 5939 (Rep. Robsion), 5942 (Rep. Slaughter), 5944 (Rep. Springer).) After brief debate, the House approved the Senate version of the bill. (*Id.* at 5946.)

On June 11, 1947, President Truman vetoed the bill and sent a message explaining his veto to the Congress. After the message was read, and without further debate, a vote was taken in the House on whether to override the veto; the attempt to override lost by only 5 votes. (*Id.* at 6674-78.)

B. The Labor Management Relations Act of 1947

Shortly after the Eightieth Congress convened, work began on a new and more comprehensive labor bill.

1. *House Consideration*

From February 5 to March 15, 1947, the House Committee on Education and Labor held 31 days of hearings on several bills that had been introduced. (Hearings Before the Committee on Education and Labor on Amendments to the National Labor Relations Act, 80th Cong., 1st Sess. (1947).) Only one of the bills before the Committee, H. R. 725 introduced by Rep. Case, contained a provision to establish federal jurisdiction over actions for breaches of collective agreements.[11] The language of the contract-action provision of the new Case bill differed somewhat from his prior bill (and from the Senate amendment which the House ultimately had adopted in the prior Con-

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[11] "EQUAL RESPONSIBILITY AND LIABILITY

"Sec. 305. (a) Suits for violations of contracts between an employer and a labor organization if such contracts affect commerce as defined in this Act may be brought by either party in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority, from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: Provided, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member of his assets.

"(c) For the purposes of this section, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principle office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena, or other legal process upon such officers or agent shall constitute service upon the labor organization."

gress). But in his testimony before the Committee, Rep. Case made clear that under that proposal, as under its predecessor, individuals would *not* be subject to suit for damages, but instead would be subject to discharge:

> [U]nder H.R. 725 . . . there is no provision for suing individual workers, as such, or ordering any judgment against them.
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> • • •
>
> But, of course, . . . under that provision relating to unfair labor practices, and the powers given to the National Labor Relations Board, [employers] can proceed to deny recognition and deny the benefits of the Wagner Act to the member of the wildcat strike. [House hearings at 125.]

When pressed by Rep. Hoffman, a member of the Committee, as to whether damages should be recoverable from union leaders who call a strike in breach of contract where the union itself has no assets, Rep. Case responded as follows:

> Of course, there are other provisions. If they did that they would lose their status as a labor organization.
>
> MR. HOFFMAN: That does not put dollars in the treasury of the employer.
>
> MR. CASE: No; but I do not think you are going to get anywhere in this workmen's legislative problem if you are going to resurrect such a situation as in the Danbury Hatters' case. We are going to have to live with any legislation you enact, and it seems to me what you need to do is enact legislation that will stand up and with which you can live. The bill would protect the employer in getting other employees. [*Id.* at 136.]

At the conclusion of the hearings, the Committee drafted a bill which followed Rep. Case's recommendation. Three provisions of that bill have particular relevance here:

First, the Committee bill would have amended § 7 of the NLRA to make explicit that the "concerted activities" protected by that Act did not include "violations of collective-bargaining agreements." (Legislative History of the Labor Management Relations Act of 1947 (G.P.O., 1948) at 49. Hereafter "Leg. Hist.") The Committee Report explained that the Committee "has revised this section by writing into it in express terms that employees who strike or engage in similar activities in violation of collective-bargaining agreement . . . forfeit the protection of the Labor Act." (Leg. Hist. at 318.)

Second, the Committee proposed a section which would create a federal cause of action for breach of a collective-agreement (Leg. Hist. at 94-95.) The language of this proposed section [12] was almost identical to the language sug-

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[12] "EQUAL RESPONSIBILITY AND LIABILITY

"SEC. 302. (a) Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought by either party in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has jurisdiction of the cause.

"(b) Any labor organization whose activities affect commerce shall be bound by the acts of its agents, and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member of his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in

gested to the Committee by Rep. Case (See p. 17, n. 11 *supra.*) The Committee report made clear that the purpose of the proposed section was, as its caption stated, to impose "equal responsibility and liability" on labor unions:

> Section 302 deals in improved form with another subject which was included in last year's Case bill. It provides that actions and proceedings involving violations of contracts between employers and labor organizations may be brought *by either party* in any district court of the United States having jurisdiction of the parties . . .
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> • • •
>
> When labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens. Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other party must assume his. [Leg. Hist. at 336-37].

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which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) In actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees, the provisions of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes', shall not have any application in respect of either party."

Once again it is plain that "parties" refers exclusively to employers and unions. (See pp. 9-10 *supra.*)

Finally, in § 12 of the Committee bill, the Committee created a damage action against any *person* engaging in an "unlawful concerted activity." (Leg. Hist. at 77-79.) Significantly, a wildcat strike was *not* defined as "unlawful concerted activity" for purposes of this section (even though such a strike was not protected concerted activity under § 7). Rather, the activities made unlawful by this section were in the nature of torts not breachs of contract.

None of these three aspects of the Committee bill generated significant discussion on the House floor. The bill was passed by the House without any change in these provisions (Leg. Hist. at 158-225.)

2. *Senate Consideration*

At the same time that the House Committee held its hearings, the Senate Committee on Labor and Public Welfare conducted hearings on two bills, one of which (S.55) had been introduced by Senators Ball, Taft and Smith. (Hearings on Labor Relations Program before the Senate Committee on Labor and Public Welfare, 80th Cong. 1st. Sess. (1947).) That bill contained a provision, captioned "Suits by And Against Labor Organizations,[13] which was

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[13] SUITS BY AND AGAINST LABOR ORGANIZATIONS

"SEC. 302. (a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting

virtually identical to "Amendment No. 3" which the same Senators had authored one year earlier. (See pp. 10-11, n. 8; 14.)

The bill reported by the Senate Committee followed the principles of the "Suits by and Against Labor Organizations" provision in the Ball-Taft-Smith bill. The Senate Committee bill would have amended the NLRA to make strikes in breach of contract an unfair labor practice. (S.1126, §§ 8(a)(6), 8(b)(5), Leg. Hist. at 112-14.) And the bill contained (as § 301) a provision, still entitled "Suits by and Against Labor Organizations," which paralleled the provision in S.55.[14] The Committee report explained

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within the scope of their authority from the said labor organization and may sue or be sued in its common name in the courts of the United States: Provided, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena, or other legal process upon such officer or agent shall constitute service upon the labor organization.

"(d) Any employee who participates in a strike or other interference with the performance of an existing collective-bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights for such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of sections 8, 9, and 10 of the National Labor Relations Act: Provided, That such loss of status for such employee shall cease if and when he is reemployed by such employer."

[14] "TITLE III

that the purpose of the section was to "make[] collective-bargaining contracts equally binding and enforceable on both parties." (Leg. Hist. at 421.) And the Report noted that "the property of the individual members of the organization would not be subject to any liability" in an action against the union. (*Id.* at 422.)

During the course of the Senate floor debates on the Committee bill, its proponents went to pains to emphasize the limited nature of the proposed § 301. For example, Senator

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"SUITS BY AND AGAINST LABOR ORGANIZATIONS

"SEC. 301 (a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or wihout regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act may sue or be sued in its common name in the courts of the United States: Provided, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit."

Subsection (d) of the analogous provision in S.55—the subsection expressly authorizing discharges of wildcat strikers—was not contained in § 301 of the Committee bill. That end was accomplished in the Committee bill by making strikes in breach of collective agreements unfair labor practices and thus unprotected.

Ball in the statement quoted by the *Atkinson* Court (p. 3 *supra*), said also:

> [W]e give to employers the right to sue a union in interstate commerce, in a Federal court, for violation of contract. *It* [*§ 301*] *does not go beyond that.* [*Id.* at 1497 (emphasis added).]

The theme of the Senator's entire explanation of his proposed substitute was that "it is not an employer's bill" but rather designed to "protect the public" and to "protect the rights and freedoms of individual employees." (Leg. Hist. 1495-96.)

Senator Smith had earlier made a similar statement:

> [T]itle III . . . merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carring out contracts legally entered into as the result of collective bargaining. *That is all title III does.* [*Id.* at 1145 (emphasis added).]

No Senator suggested that § 301 could provide a basis for suing individual employees for damages.

While the Committee bill was before the Senate, Senator Taft offered a floor amendment which, like § 12 of the House bill, would have established a damage action against individuals who engage in certain types of unlawful activities. (Leg. Hist. at 1346.)[15] But like § 12, the Taft amend-

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[15] Senator Taft offered his amendment as a substitute for an amendment offered by Senator Ball which would have authorized injunctive as well as damage actions against the conduct proscribed by the amendment. (Leg. Hist. at 1323-24.) Senator Taft explained that while he personally favored the Ball amendment, he had concluded that "the welfare of the entire bill" would be jeopardized by passage of that amendment and accordingly had reach a compromise with Senator Ives of New York pursuant to which the Taft amendment was offered. (*Id.* at 1365-66.)

ment would *not* have applied to wildcat strikes in breach of collective agreements, but rather was limited to such activities as secondary boycotts and jurisdictional strikes. Moreover, during the course of the debate over his amendment, Senator Taft altered it to authorize damage actions only against unions and *not* against individual employees. The debate made clear that this change was made precisely because the amendment—*unlike* § *301*—would have imposed liability on employees individually, a far-reaching step the Senate was not prepared to take:

> MR. MORSE: . . . [T]he proposal of the Senator from Ohio would open wide the doors of the Federal courts to damage suits against any person who engaged in a strike or attempted to persuade other employees to engage in a strike for one of the prohibited objectives. The proposal very definitely would take us back at least 40 years and we would again have the spectacle of mass suits against employees, similar to the infamous Danbury Hatters case. Senators will recall that in that case some 150 members of the union were sued by their employer and the Supreme Court of the United States sustained a judgment against them in the neighborhood of a quarter million dollars. As a matter of fact the proposal would make it substantially easier to maintain a damage suit than was the case under the Sherman Act . . .
>
> It also should be pointed out that the substitute proposal is inconsistent with the present provision in the bill allowing a union to be sued for breach of contract.

This is one of a number of points in the debates at which supporters of the bill made clear that, in anticipation of a possible veto, the bill was being shaped to attract sufficient support to enable the Congress to override the veto. This pervasive concern of the sponsors was recognized in *Pipefitters* v. *United States*, 407 U.S. 385, 409, and in the cases there cited. (See also, e.g., Leg. Hist. at 881-82, 883-84 (Rep. Hartley).)

Section 301 of the bill permits suits against labor organizations only, whereas the substitute proposal allows damage suits against "any person." Also, section 301 limits recovery to the assets of the union. The substitute allows the attachment of employees' bank accounts and all their property.

MR. TAFT: Mr. President, will the Senator yield?

MR. MORSE: I yield to the Senator from Ohio.

MR. TAFT: On request by the Senator from New York [Sen. Ives] and others who raised the point, I am amending the proposal, by striking out the word "person," in the second line, and inserting in lieu thereof "labor organization," so the action will be open only against labor organizations promoting this type of strike.

MR. MORSE: I want to say, Mr. President, that I am very glad the Senator from Ohio is agreeing, at least, to remove my first objection to the amendment. I shall not press the argument on that point, other than to say that had it remained as it was submitted to the Senate, we should have been back to the Danbury Hatters' case of 40 years ago. [*Id.* at 1357-58 (emphasis added).]

This discussion is important not because of Senator Morse's views, since he opposed the bill, but because Senator Taft accepted those views on the meaning of § 301 and amended the proposed § 303 to limit the latter's thrust to that of § 301 as explicated by Senator Morse.

As modified by Senator Taft, the amendment he proposed was approved as § 303 of the bill (*id.* at 1400), and the bill was thereafter approved by the Senate (*id.* at 1522).

3. *The Conference Report and the Presidential Veto*

Following passage by both Houses of a labor bill, a Conference Committee was convened; the Conference Report

eventually was enacted as the LMRA. The Conference Committee took two actions of relevance here:

First, the Committee deleted the provision of the House bill which had expressly made concerted activity in breach of a collective agreement unprotected.[16] But the Committee made clear that it did not disagree with the principle of this provision. Rather the provision was deleted only because it was "unnecessary" in light of recent decisions of the NLRB which had held that "strikes in violation of collective bargaining contracts were not concerted activities protected by the act, and refused to reinstate employees discharged for engaging in such activities." (Leg. Hist. at 542-43. See also *id.* at 563 (discussing § 13 and stating that the section provided in part "that nothing in the act was to affect the limitations or qualifications on the right to strike. . . .").)[17]

Second, the Conference Committee rejected § 12 of the House bill in favor of § 303 of the Senate bill, thereby refusing to create a damage action against *individual employees* for the conduct proscribed in those sections. The statement of the House Managers explained:

> Many of the matters covered in section 12 of the House bill are also covered in the conference agreement in different form, as has been pointed out above in the discussion of section 7 and section 8(b)(1) of the con-

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[16] The Conference Report also rejected the Senate provision making breaches of collective agreements unfair labor practices. The Report explained: "Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the NLRB." (Leg. Hist. at 545.) (See *Dowd Box*, 368 U.S. at 510-511.)

[17] The Committee cited *Scullin Steel Co.*, 65 NLRB 1294 and *Joseph Dyson & Sons, Inc.*, 72 NLRB 445. See also *Mastro Plastics Corp.* v. *Labor Board*, 350 U.S. 270, 280, n. 10.

> ference agreement. Under existing principles of law developed by the courts and recently applied by the Board, employees who engage in violence, mass picketing, unfair labor practices, contract violations, or other improper conduct, or who force the employer to violate the law, do not have any immunity under the act and are subject to discharge without right of reinstatement. The right of the employer to discharge an employee for any such reason is protected in specific terms in section 10(c) [18]. Furthermore, under section 10(k) of the conference agreement, the Board is given authority to apply to the district courts for temporary injunctions restraining alleged unfair labor practices temporarily pending the decision of the Board on the merits. [Leg. Hist. at 563.] [19]

Thus, that Committee decided to rely on the remedy of discharge, rather than on damage actions, to deal with misconduct by employees. (Of course, even under the House bill, the § 12 damage action would not have reached wildcat strikes; as to such strikes, the House had itself decided to rely on the remedy of discharge. (See p. 21 *supra*).)

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[18] Section 10(c) to which the Committee referred, provides in part as follows:

> No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

[19] The deletion of the damage action against individuals and the limitation on the types of conduct which could give rise to a damage action against a labor union were just two of a number of concessions made by the House conferees. During the House debate on the conference report, Rep. Hartley, responding to criticism that the conferees had compromised too much, explained that "there was no concession made except upon the assurance that it would provide us votes in another body to be certain that the legislation would be enacted into law." (Leg. Hist. at 883-84.)

Finally, the Conference Report resolved minor differences, not here pertinent, between the House and Senate versions of § 301, developing the language that was enacted into law.

The debates on the Conference Report in both Houses were brief. The only references to § 301 described it as a provision authorizing suits by and against labor organizations. (Leg. Hist. at 873 (Rep. Case), 1543 (Sen. Taft).) The Conference Report was adopted by both houses. (*Id.* at 899, 900, 1620-21.)

On June 20, 1947, President Truman vetoed the Taft-Hartley bill and transmitted a message to Congress explaining his decision. (*Id.* at 915-21.) Without debate, the House voted to override that veto. (*Id.* at 922-23.) Several days later, following brief debate, the Senate did likewise. (*Id.* at 1656-57.)

* * *

The foregoing recitation of the legislative history of § 301 in the 79th and 80th Congresses refutes petitioners' contention that

> there is nothing in the language of § 301 or its legislative history that indicates Congress intended to limit the type of relief available to the injured party to the collective bargaining agreement where the employees are not acting as agents of their union. [Pet. Br. 24]

And that history leaves no room for the proposition that allowing § 301 damage actions against individual employees would be sound policy. Petitioners' principle point—that ". . . Denial of a Damage Action Against the Individual Employees Leaves the Companies Without Any Monetary Remedy" (Pet. Br. 23 (Heading))—is reminiscent of Rep. Hoffman's objection that allowing employers to discipline employees "does not put dollars in the treasury of

the employer." Rep. Case's response was to adhere to the decision not to allow employer § 301 damage suits against individual employees and to emphasize the necessity of that limitation if "you are going to get anywhere in this workmen's legislative problem." (House Hearings at 136 quoted at p. 18 *supra.*) Congress in enacting § 301 endorsed Rep. Case's position. The legislature thereby set the policy of the Act that governs its proper construction and that precludes the "judicial inventiveness" of creating the damage remedy the "companies sought" unsuccessfully from the courts below. (Cf. Pet. Br. 20.)[20]

CONCLUSION

For the above stated reasons the judgment below should be affirmed.

Respectfully submitted

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[20] Petitioners fundamentally misconceive the judicial function in urging this Court to allow "a damage action in this case against employees" in order to "fill the void between *Atkinson* and *Carbon Fuel* [*Co.* v. *Mine Workers,* 444 U.S. 212]." (Pet. Br. 27.) In neither of those unanimous decisions did the Court realign the statutory provisions Congress had arranged; in both the Court ascertained and followed Congress' design. And the question of whether that design leaves a "void" that should be "filled" is for Congress, not the courts.